MONTANA LEGISLATIVE HISTORY

Chapter 243 1995

Bill H _____ S 375 Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Labor & Emp		
Hearing Date(s)	3-6	✓ C	Hearing Date(s)	2-16	✓ C
	3-7	✓ C		2-18	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/16	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	33	15
2/21	3RD READING PASSED	36	14
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO NATURAL RESOURCES		
3/15	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	94	0
3/28	3RD READING CONCURRED	88	10
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 395		
	EFFECTIVE DATE: 10/01/95		

SB 374 INTRODUCED BY HARP

REVISE CERTAIN STATE FUND INSURANCE LAWS

BY REQUEST OF THE STATE FUND

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/14	FISCAL NOTE REQUESTED		
2/16	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	32	18
2/22	3RD READING PASSED	36	14
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO BUSINESS & LABOR		
3/08	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	100	0
3/14	3RD READING CONCURRED	100	0
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS CONCURRED	46	0
3/20	3RD READING AMENDMENTS CONCURRED	48	2
3/25	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 305		
	EFFECTIVE DATE: 07/01/95		

SB 375 INTRODUCED BY BENEDICT, ET AL.

GENERALLY REVISE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO LABOR & EMPLOYMENT RELATIONS		

2/13	FISCAL NOTE REQUESTED		
2/16	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED		
2/21	REVISED FISCAL NOTE PRINTED		
2/21	2ND READING PASSED	33	17
2/22	3RD READING PASSED	33	17
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO BUSINESS & LABOR		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	71	28
3/14	3RD READING CONCURRED	68	31
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 243		
	EFFECTIVE DATE: 07/01/95		

SB 376 INTRODUCED BY CHRISTIAENS, ET AL.

REGULATE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO BUSINESS & INDUSTRY		
2/13	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/18	2ND READING PASSED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/04	REREFERRED TO JOINT HEALTH CARE SELECT		
3/09	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED AS AMENDED	92	6
3/27	3RD READING CONCURRED	87	8
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	46	0
4/03	3RD READING AMENDMENTS CONCURRED	45	0
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 420		
	EFFECTIVE DATE: 10/01/95		

SENATE BILL NO. 375

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER, CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701, 39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727, 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] authorizes the department of labor

and industry to adopt rules to provide for prompt claims handling practices for injured workers, for employers, and for providers who are the customers of the workers' compensation system. It is the intent of the legislature that the department of labor and industry adopt rules providing claimants with written explanations of claims and the methodology of benefit calculation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Stay pending determination by district court.** Upon a motion and filing of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of proceedings in the workers' compensation court if a criminal action involving workers' compensation insurance fraud by a claimant has been filed in district court.

NEW SECTION. **Section 2. Benefit reduction for third-party recovery.** (1) If an employee is injured or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits paid or that are required to be paid to the employee or beneficiary pursuant to chapter 71 or 72 as a result of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party recovery, settlement, or award.

(2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to 39-71-414.

(3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be offset by any reduction in benefits pursuant to subsection (1).

NEW SECTION. **Section 3. Payment of medical claims without acceptance of liability.** (1) An insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational disease without the payments being construed as an acceptance of liability for the claim.

(2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of the payment of the medical claim without acceptance of liability.

(3) Upon written request by a worker for the payment of indemnity benefits or for a determination of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease

under 39-71-606 or 39-71-608.

NEW SECTION. **Section 4. Insurers to act promptly on claims.** (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(3) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(4) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

(5) The department may adopt rules to implement this section.

Section 5. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases ~~employed~~ used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the

injury.

~~(1)~~(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) ~~the~~ investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(3)~~(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under ~~the age of~~ 18 years of age;

(c) an unmarried child under ~~the age of~~ 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over ~~the age of~~ 18 years of age who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

(f) a brother or sister under ~~the age of~~ 18 years of age if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

~~(4)~~(5) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(6)~~(7) "Construction industry" means the major group of general contractors and operative builders,

heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

~~(8)~~(9) "Department" means the department of labor and industry.

~~(9) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.~~

(10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(12) "Invalid" means one who is physically or mentally incapacitated.

(13) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(15) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(15)~~(16) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(16)~~(17) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(17)~~(18) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business

if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(18)~~(19) "Permanent partial disability" means a physical condition~~, after~~ in which a worker, ~~has reached~~ after reaching maximum medical ~~healing, in which a worker~~ healing:

(a) ~~has a medically determined physical restriction as a result of an injury as defined in 39-71-119~~ has a permanent impairment established by objective medical findings; ~~and~~

(b) is able to return to work in some capacity but the ~~physical restriction~~ permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

~~(19)~~(20) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(20)~~(21) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(21)~~(22) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(22)~~(23) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(23)~~(24) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(24)~~(25) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~(26) (a) "Secondary medical services" means those medical services or appliances considered

not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (26), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(26)~~(27) "Temporary partial disability" means a physical condition resulting from an injury as defined in 39-71-119 in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(27)~~(28) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(28)~~(29) "Temporary total disability" means a physical condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(29)~~(30) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(30)~~(31) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if

there is not a physician, as defined in subsection ~~(30)(a)~~ (31)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(31)~~(32) "Year", unless otherwise specified, means calendar year."

Section 6. Section 39-71-119, MCA, is amended to read:

"39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical ~~harm~~ condition in relation to other factors contributing to the physical ~~harm~~ condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition."

Section 7. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d).

Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value;

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement; and

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) ~~For~~ (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if~~:~~

~~(a)~~ the term of employment for the same employer is less than four pay periods, ~~in which case~~ the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work~~; or~~.

(b) ~~for~~ For good cause shown, ~~by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods~~ if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118 must be based upon a wage of not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 8. Section 39-71-407, MCA, is amended to read:

"**39-71-407. Liability of insurers -- limitations.** (1) ~~Every~~ Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment

agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(6)~~(7) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 9. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of injuries other than death to be submitted within thirty days. ~~No~~ (1) A claim to recover benefits under the Workers' Compensation Act~~,~~ for injuries not resulting in death~~,~~ may not be considered compensable unless, within 30 days after the occurrence of the accident ~~which~~ that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work ~~upon~~ in which the injured employee was engaged at the time of the injury is equivalent to notice.

(2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the

injury."

Section 10. Section 39-71-609, MCA, is amended to read:

"**39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer -- fourteen days' notice required -- exception.** ~~If~~ (1) Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity."

Section 11. Section 39-71-701, MCA, is amended to read:

"**39-71-701. Compensation for temporary total disability -- exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or

(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical ~~evidence~~ findings.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative

position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases ~~where~~ in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ the week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 12. Section 39-71-702, MCA, is amended to read:

"**39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical ~~evidence~~ findings.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.

(4) In cases ~~where~~ in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for

the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."

Section 13. Section 39-71-703, MCA, is amended to read:

"**39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award~~.~~ if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association *Guides* to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

~~(2)~~(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection ~~(3)~~ (4) by 350 weeks.

~~(3) An~~ (4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%. ~~The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association~~

~~Guides to the Evaluation of Permanent Impairment.~~

(5) The percentage to be used in subsection ~~(2)~~ (3) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is ~~30~~ 40 years of age or younger at the time of injury, 0%; if the claimant is over ~~30~~ 40 years of age ~~but under 56 years of age~~ at the time of injury, ~~2%~~ 1%; ~~and if the claimant is 56 years of age or older at the time of injury, 3%;~~

(b) for a worker who has completed less than ~~9~~ 12 years of education, ~~3%~~ 1%; for a worker who has completed ~~9 through~~ 12 years or more of education or who has received a graduate equivalency diploma, ~~2%~~ 0%; ~~for a worker who has completed more than 12 years of education, 0%~~;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%~~; and~~. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, ~~20%~~ 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, ~~15%~~ 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, ~~10%~~ 2%.

~~(4)~~(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

~~(5)~~(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

~~(6)~~(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 14. Section 39-71-710, MCA, is amended to read:

"**39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement ~~benefits~~, the claimant is considered to be retired. When the claimant is ~~considered~~ retired, the liability of the insurer is ended for payment of ~~wage supplement~~ permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible under subsection (1) to receive ~~social security~~ retirement benefits and ~~is~~ while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 15. Section 39-71-711, MCA, is amended to read:

"**39-71-711. Impairment evaluation -- ratings.** (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605."

Section 16. Section 39-71-712, MCA, is amended to read:

"**39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.

(4) A worker requalifies for temporary total disability benefits if the modified position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be ~~considered an element of permanent partial disability and may not be~~ credited against any ~~permanent impairment or any~~ permanent partial disability award or settlement ~~achieved after the injured worker reaches maximum healing~~ under 39-71-703."

Section 17. Section 39-71-721, MCA, is amended to read:

"**39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of ~~such~~ the death, ~~then~~ the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A

beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~(4)(b) through ~~(3)(d)~~ (4)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 18. Section 39-71-723, MCA, is amended to read:

"39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ if there is more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof shall~~ must be a question of fact for determination by the department."

Section 19. Section 39-71-727, MCA, is amended to read:

"39-71-727. Payment for prescription drugs -- limitations. (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may ~~only~~ bill the insurer only for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) Reimbursement rates payable by an insurer ~~subject to an agreement pursuant to 39-71-1102~~ are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not to exceed $5.50 per product.

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, average wholesale prices must be updated weekly.

(8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as provided in 37-7-502.

(9) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy.

(10) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer."

Section 20. Section 39-71-741, MCA, is amended to read:

"**39-71-741. Compromise settlements and lump-sum payments.** (1) (a) Benefits under this chapter may be converted in whole or in part to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(2) (a) ~~If an insurer has accepted initial liability for an injury, permanent~~ Permanent partial disability benefits may be converted in whole or in part to a lump-sum payment if:

(i) an insurer has accepted initial liability for an injury; and

(ii) the claimant and the insurer agree to a lump-sum conversion.

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 ~~or $20,000, whichever is less~~.

(c) An agreement is subject to department approval. The department may disapprove an agreement only if the department determines that the ~~settlement~~ lump-sum conversion amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) Upon approval, ~~the agreement constitutes~~ a compromise and release settlement ~~and~~ may not be reopened by the department.

(3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The total of all lump-sum conversions in part that are awarded to a claimant may not exceed $20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval or award of a lump-sum payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under ~~subsection (3)~~ this section must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year~~, rounded to the nearest whole number~~.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) Subject to the other provisions of this section, the department ~~has full power, authority, and jurisdiction to allow~~, shall approve~~, or condition~~ or deny in writing compromise settlements ~~for any type of benefits provided for under this chapter~~ and ~~or~~ lump-sum payments agreed to by workers and insurers. ~~All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing.~~ The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

Section 21. Section 39-71-744, MCA, is amended to read:

"**39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided

in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated for a period exceeding 30 days in a correctional institution~~, such as the Montana state prison or the Montana women's correctional center~~ or jail~~,~~ as the result of conviction of a felony or a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)."

Section 22. Section 39-71-1011, MCA, is amended to read:

"**39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means ~~one~~ a worker who has a ~~medically determined restriction~~ permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and 39-71-2001.

(4) "Rehabilitation plan" means an individualized plan ~~to assist~~ that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker's actual wage loss.

(5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation certification and designated by the insurer to the department or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services

under 39-71-1003.

(6) "Rehabilitation services" ~~consists of~~ means a program of evaluation, planning, and ~~delivery of goods and services~~ implementation of a rehabilitation plan to assist a disabled worker to return to work."

Section 23. Section 39-71-1032, MCA, is amended to read:

"**39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' notice to the worker and department on a form approved by the department, may terminate any ~~rehabilitation~~ benefits, except medical benefits and the impairment award, that the worker is receiving ~~under this part~~ until the worker cooperates.

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. The department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing.

(3) If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 30 days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court."

Section 24. Section 39-71-2001, MCA, is amended to read:

"**39-71-2001. Rehabilitation benefits.** (1) ~~An injured~~ A disabled worker as defined in 39-71-1011 is eligible for rehabilitation benefits if:

(a) ~~the injury results in permanent partial disability or permanent total disability as defined in 39-71-116~~ the worker has an actual wage loss as a result of the injury;

~~(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;~~

~~(c) a rehabilitation plan completed by~~ (b) a rehabilitation provider, ~~and~~ as designated by the insurer, certifies that the injured worker has reasonable vocational goals and ~~a~~ reemployment ~~and wage potential~~ opportunity and will have a reasonable reduction in the worker's actual wage loss with rehabilitation~~.~~; and

~~The plan must take into consideration the worker's age, education, training, work history, residual physical~~

~~capacities, and vocational interests.~~

~~(d)~~(c) a rehabilitation plan ~~between~~ agreed upon by the injured worker and the insurer is filed with the department. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning and completion date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the ~~injured~~ disabled worker is entitled to receive ~~rehabilitation~~ biweekly compensation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. ~~Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan.~~ The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily ~~completing~~ progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

~~(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.~~

~~(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot return to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).~~

~~(5)~~(3) A worker may not receive temporary total ~~or biweekly permanent partial disability~~ benefits and ~~rehabilitation~~ the benefits under subsection (2) during the same period of time.

~~(6) The~~ (4) A rehabilitation provider~~, as~~ authorized by the insurer~~,~~ shall continue to ~~work with and~~ assist the injured worker until the rehabilitation plan is completed.

(5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan

within 78 weeks of reaching maximum medical healing.

~~(7)~~(6) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 25. Section 39-72-403, MCA, is amended to read:

"**39-72-403. Time when claims must be presented.** (1) When a claimant seeks benefits under this chapter, ~~his~~ the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within ~~2 years~~ 1 year from the date the claimant knew or should have known that ~~his total disability~~ the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, ~~his~~ claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years."

Section 26. Section 39-72-704, MCA, is amended to read:

"**39-72-704. Medical and hospital expenses.** In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive, for treatment of the occupational disease, ~~without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the department~~ payment of medical expenses under Title 39, chapter 71."

NEW SECTION. **Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 28. Codification instructions.** (1) [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 6, and the provisions of Title 39, chapter 71, part 6, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 4].

(5) Section 39-71-2001 is intended to be renumbered and codified as an integral part of Title 39, chapter 71, part 10.

NEW SECTION. **Section 29. Effective date.** [This act] is effective July 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0375, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising workers' compensation and occupational disease laws.

ASSUMPTIONS:

1. A closed claim study was completed of Plan I, Plan II and Plan III closed claims. The study reviewed 747 State Fund closed claims from fiscal years 1983 to 1994. Of these, 168 were post-1991 law claims. Analysis of these claims was the basis to determine the impact of the provisions of this bill. Of these 168 claims, 149 were permanent partial disability (PPD) claims.
2. The cost of the 168 post-1991 PPD closed claims reviewed in the study totaled $4,742,671, for an average cost per claim of $28,230. The costs of the 149 PPD closed claims was $2,267,946. Based on State Fund data, 62.5% of the total wage loss claims reported are PPD and 37.5% are temporary total disability (TTD) that do not move to PPD.
3. Number of wage loss claims reported in FY94 was 3,686.
4. Estimated claim costs associated with PPD claims in FY94 is $65,034,863 (62.5% x 3,686 claims x $28,230 = $65,034,863).
5. Actuarial estimate of FY94 ultimate claim costs is $198,500,000 ($119,000,000 indemnity, $79,500,000 medical).
6. The PPD total costs of the 149 closed claims reviewed were: age & education - 8.3%; physical restriction - 25.5%; rehabilitation (8 wk provision) - 9.4%.
7. The Section 13 estimated effect of this bill is: physical restriction - 77% reduction in benefits; age - 70% reduction in benefits; education - 52% reduction in benefits; net age and education - 61% reduction of benefits; rehab will result in 100% reduction of the lump sum for 8 weeks settlement.
8. Estimated cost savings on FY94 ultimate costs for changes in Section 13 of this bill: age & education - $65,034,863 x 8.3% x 61% = 3,292,715; physical restriction - $65,034,863 x 25.5% x 77% = 12,769,595; rehabilitation - $65,034,863 x 9.4% x 100% =6,113,277; total cost savings Section 13 = $22,175,587
9. Estimated impact of Section 10 of this bill: a) FY95 average date of medical service to mailroom date is 48.67 days (6.95 weeks); b) 14 days of benefit requirements from date of notification; c) 6 weeks of mail time plus 2 weeks of benefits equals a total of 8 weeks; d) the average weekly wage for TTD benefits is estimated at $225; e) 37.5% of all claims are TTD, 37.5% of 3,686 = 1,382 claims; f) savings estimated at: 8 weeks x $225/wk x 1,382 claims = $2,487,600 savings Section 10
10. Objective medical findings have been previously estimated by NCCI at 1% of total indemnity. $119,000,000 x 1% = $1,190,000 (savings Section 6).
11. Average duration for compensation benefits for PPD claims is estimated at 103 weeks. FY94 average weekly wage was $181 for PPD claims. Assume a discount rate of 6%. Savings from discounting lump sum settlements of PPD claims is estimated at $1,075 per claim on 2,304 claims, or $2,476,800 (savings Section 20).
12. One-time estimated cost of computer changes to implement this bill are $30,000.
13. Estimated savings: Section 6 = $1,190,000; Section 10 = $2,487,600; Section 13 = $22,175,587; Section 20 = $2,476,800; Total = $28,329,987 or 14.3% of FY94 ultimates.
14. Projected total ultimates is $164,000,000 in FY96 and $157,500,000 in FY97.

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Dave Lewis 2-17-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Steve Benedict 2-17-95
STEVE BENEDICT, PRIMARY SPONSOR DATE

FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Total Ultimate Liabilities	($23,452,000)	($22,522,500)

The estimated reduction in total ultimate liabilities would put very significant downward pressure on total premium revenues required by the State Fund. The extent to which premium revenues would be reduced would be subject to analysis by the State Fund's independent actuary and action by the State Fund board of directors.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0375, as introduced (revised)

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising workers' compensation and occupational disease laws.

ASSUMPTIONS:

1. A closed claim study was completed of Plan I, Plan II and Plan III closed claims. The study reviewed 747 State Fund closed claims from fiscal years 1983 to 1994. Of these, 168 were post-1991 law claims. Analysis of these claims was the basis to determine the impact of the provisions of this bill. Of these 168 claims, 149 were permanent partial disability (PPD) claims.
2. The cost of the 168 post-1991 closed claims reviewed in the study totaled $4,742,671, for an average cost per claim of $28,230. The costs of the 149 PPD closed claims was $2,267,946. Based on State Fund data, 62.5% of the total wage loss claims reported are PPD and 37.5% are temporary total disability (TTD) that do not move to PPD.
3. Number of wage loss claims reported in FY94 was 3,686.
4. Estimated claim costs associated with PPD claims in FY94 is $65,034,863 (62.5% x 3,686 claims x $28,230 = $65,034,863).
5. Actuarial estimate of FY94 ultimate claim costs is $198,500,000 ($119,000,000 indemnity, $79,500,000 medical).
6. The PPD total costs of the 149 closed claims reviewed were: age & education - 8.3%; physical restriction - 25.5%; rehabilitation (8 wk provision) - 9.4%.
7. The Section 13 estimated effect of this bill is: physical restriction - 77% reduction in benefits; age - 70% reduction in benefits; education - 52% reduction in benefits; net age and education - 61% reduction of benefits; rehab will result in 100% reduction of the lump sum for 8 weeks settlement.
8. Estimated cost savings on FY94 ultimate costs for changes in Section 13 of this bill: age & education - $65,034,863 x 8.3% x 61% = 3,292,715; physical restriction - $65,034,863 x 25.5% x 77% = 12,769,595; rehabilitation - $65,034,863 x 9.4% x 100% =6,113,277; total cost savings Section 13 = $22,175,587
9. Estimated impact of Section 10 of this bill: a) FY95 average date of medical service to mailroom date is 48.67 days (6.95 weeks); b) 14 days of benefit requirements from date of notification; c) 6 weeks of mail time plus 2 weeks of benefits equals a total of 8 weeks; d) the average weekly wage for TTD benefits is estimated at $225; e) 37.5% of all claims are TTD, 37.5% of 3,686 = 1,382 claims; f) savings estimated at: 8 weeks x $225/wk x 1,382 claims = $2,487,600 savings Section 10
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11. Average duration for compensation benefits for PPD claims is estimated at 103 weeks. FY94 average weekly wage was $181 for PPD claims. Assume a discount rate of 6%. Savings from discounting lump sum settlements of PPD claims is estimated at $1,075 per claim on 2,304 claims, or $2,476,800 (savings Section 20).
12. One-time estimated cost of computer changes to implement this bill are $30,000.
13. Estimated savings: Section 6 = $1,190,000; Section 10 = $2,487,600; Section 13 = $22,175,587; Section 20 = $2,476,800; Total = $28,329,987 or 14.3% of FY94 ultimates.
14. Projected total ultimates is $164,000,000 in FY96 and $157,500,000 in FY97.

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Dave Lewis 2-21-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Benedict 2-21-95
STEVE BENEDICT, PRIMARY SPONSOR DATE

FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Total Ultimate Liabilities	($23,452,000)	($22,522,500)

The estimated reduction in total ultimate liabilities would put very significant downward pressure on total premium revenues required by the State Fund. The extent to which premium revenues would be reduced would be subject to analysis by the State Fund's independent actuary and action by the State Fund board of directors.

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REFERRED ---- DATE READ

SB0125	KEATING, TOM		EXEMPT PETROLEUM LAND PROFESSIONALS FROM UNEMPLOYMENT AND WORKERS COMP					
	1/13	1/19		PASS AS AMENDED	1/24	VOTE: 8-1		1/25
SB0151	BARTLETT, SUE		REVISE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER					
	1/16	1/24		PASS AS AMENDED	1/31	VOTE: 9-0		2/01
SB0155	SWYSGOOD, CHUCK		EXEMPT CERTAIN MOTOR CARRIERS FROM WORK COMP AND UNEMPLOYMENT INSURANCE LAWS					
	1/16	1/31		TABLED ON	02/01	VOTE:		
SB0179	WILSON, WILLIAM		INCREASE MINIMUM WAGE FOR CERTAIN EMPLOYEES TO $5 AN HOUR					
	1/18	2/07		TABLED ON	02/10	VOTE:		
SB0180	TVEIT, LARRY		REVISE BINDING SCHOOL ARBITRATION LAW					
	1/19	2/02		DO PASS	2/9	VOTE: 6-3		2/09
SB0201	BURNETT, JIM		AUTHORIZE DRUG & ALCOHOL TEST OF EMPLOYEE INVOLVED IN WORK-RELATED ACCIDENT					
	1/19	2/02		DO PASS	2/9	VOTE: 7-2		2/09
SB0238	VAN VALKENBURG, FRED		EXEMPT CERTAIN UNIVERSITY TEMPORARY EMPLOYEES FROM MANDATED STATE BENEFITS					
	1/25	2/07		PASS AS AMENDED	2/9	VOTE: 6-3		2/09
SB0264	GAGE, DELWYN		ESTABLISH THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT					
	1/27	2/07		PASS AS AMENDED	2/9	VOTE: 9-0		2/09
SB0348	GROSFIELD, LORENTS		CAP WORK COMP ADMIN ASSESS FOR PLAN 1, CAP INCREASES PLANS 1 & 2, RAISE MIN					
	2/10	2/18		TABLED ON	02/20	VOTE:		
SB0354	FORRESTER, GARY		REGISTRATION OF CONSTRUCTION CONTRACTORS BY DEPARTMENT OF LABOR					
	2/10	2/18		PASS AS AMENDED	2/18	VOTE: 6-3		2/20
SB0374	HARP, JOHN		REVISE CERTAIN LAWS RELATING TO THE STATE FUND					
	2/11	2/16		PASS AS AMENDED	2/18	VOTE: 6-3		2/20
SB0375	BENEDICT, STEVE		REVISE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS					
	2/11	2/16		DO PASS	2/18	VOTE: 6-3		2/20

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 16, 1995, at

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 374
SB 375

Executive Action: None.

{Tape: One; Side: One}

HEARING ON SB 374

Opening Statement by Sponsor:

SENATOR JOHN HARP, SD 42, Flathead Valley, stated SB 374 was requested by the State Fund. Clarification is needed to establish authority and to have the ability to operate like a private carrier, as well as to have the flexibility to meet challenges of the ever changing Workers' Compensation market. State Fund is the insurer of last resort. If the State Fund has a principal employer or employee, who owes money, the State Fund will not be obligated to insure them. SB 374 will allow the State Fund to offer employers liability insurance, which is known as Plan B coverage. Two years ago, the State Fund was not in a

in the process of developing and working with customers to develop retroactive programs.

Closing by Sponsor:

SENATOR HARP closed the hearing on SB 374 by attesting State Fund is like a child that is feeling better. **SENATOR HARP** stated he wants "this child" to continue to grow and prosper. He does not want "the youngster" to regress or relapse back to the negative situations of the 1993, 1991 and 1989 sessions. Senate Bill 374 gives the State Fund an opportunity to offer additional services, to function as a business and to match goals mandated from the 1993 legislature. The State Fund will have a 25% surplus on premium dollars shortly after the year 2000. **SENATOR HARP** stated he is amused by State Fund critics who complain that State Fund is not running like a business. **SENATOR HARP** stated, in the past, he had been a critic. In 1995, after realizing improvements and positive positioning tactics, the State Fund is beginning to realize goals. **SENATOR HARP** stated, in spite of positive advancements, criticism is being directed at State Fund for making positive steps toward mandated goals. State Fund is a governmental entity, encouraging good business practice. The State Fund covers 160,000 employees by insuring 26,000 businesses. State Fund covers all three plans and has worked to make reductions a reality. State Fund down sizing was planned. State Fund does not want to face past mismanagement problems in the future. The negative aspect of State Fund has been changed to a" positive redirection". State Fund can carry out its mission into the future. **SENATOR HARP** urged support of SB 374.

HEARING ON SB 375

Opening Statement by Sponsor:

SENATOR BENEDICT rendered a brief history of SB 375. Since bringing the draft request to the legislative council in early January, **SENATOR BENEDICT** stated he has been involved in as many groups as possible to come together and formulate the final project. **SENATOR BENEDICT** discussed proposals with representatives for State Fund, private insurers groups, and the self insured association. The bill was taken to the State Fund headquarters, and to as many other groups as possible. They were asked to critique the bill and submit written comments. The responses varied and represented: The Coalition for the Workers' Compensation Improvement, Jerry Driscoll, who represented a group of impacted people; the Department of Labor and Industry, and Employment Relations Division, Montana Self Insurers Association; Rehabilitation Associates of Montana, Montana Municipal Insurance Authority, and the MT AFL-CIO.

SENATOR BENEDICT stated he went back to the drawing board to complete a final draft and to consider as many concerns as possible. He wanted "enough" people to agree the bill was good,

and the bill could be moved forward through the process. **SENATOR BENEDICT** stated he felt the drafters were fair. Some parties think the bill did not go far enough, some think the bill went too far. **SENATOR BENEDICT** stated the system is not completely fixed, many positive results came from legislation, originating back to 1987. Rates leveled off last year. Premiums stabilized since July 1994 for the first time in approximately seven years. The rates are still amongst the highest rates in the nation. Senate Bill 375 originated for this reason. A 1994 Workers' Compensation study placed Montana's compensation rate the second highest in the nation. The rates impacts Montana employees, who spend the second highest amount for Workers' Compensation Insurance. Montana's compensation system in today's global market places employers at an enormous disadvantage. Montana has a hard time competing in the Northwest, consequently, Montana legislation must address the high rate problem. Montana cannot run at a disadvantage and wonder why the business community is not growing and why jobs are not growing, except in the service sector.

Colorado, the next highest state in the region is 23% lower than Montana. Currently, Colorado is also addressing a Workers' Compensation crisis. Three years ago, Oregon was near the top of the list and was amongst the nation's highest. Today, the Oregon Workers' Compensation rates are close to the bottom. Why? Because Oregon came to grips with the problem in 1990. Currently, Oregon provides economic advantages to employers.

Senate Bill 375 reduces benefits to injured workers and places important emphasis on wage loss. Senate Bill 375 provides incentives for employers to work cooperatively with injured workers, to return workers to work earlier, and to reduce wage loss suffered by injured employees. The system benefits workers by maintaining their jobs or modifying their duties. Workers continue to earn wages and remain an active part of the work force. The employer benefits from lower benefit because the premium rates do not significantly escalate. The 1993 Legislature addressed pre-injury deterrence, safety, loss prevention, and managed care. In addition, legislation focused on Medicaid cost containment and fraud. The changes did not change the disability benefits available under the Workers' Compensation Act. The last time the legislature confronted benefits was in 1991. State Fund rates have increased 50% since 1991. Montana needs a significant culture change for successful reformation of Workers' Compensation to take place. Senate Bill 375 will assist Montana in achieving cooperation between the employers and the injured workers. Senate Bill 375 creates a system that is fair to injured workers who truly suffer from a wage loss, while allowing insurers to focus on employers and help keep their workers on the job. **SENATOR BENEDICT** urges committee support of SB 375.

Proponents' Testimony:

Nancy Butler, General Council, State Fund, gave a in-depth overview. Wage permanent partial disability benefits are handled in the bill wage loss and impairment rating, which are required in order to access permanent/partial benefits. Currently, as physical restrictions that impair the workers' ability to work as required, the permanent partial disability benefits are also modified. There are five components. The wage loss and impairment remains the same. The physical restriction has been reduced from a possible 20%, or 15%-10% to a possible 5%, 3%, or 2%. The age and education component has been reduced from a possible 3% or 2% to 1%. The impairment rating will be paid to workers, even though the worker does not suffer a wage loss. The bill allows for potential reduction of the wage loss component, if the worker is able to restore any wage loss through a vocational-rehabilitation plan. Vocational rehabilitation benefits have been generally changed. The definition of a disabled worker has been amended to mean "a worker who is precluded from returning to the job held at the time of the injury and who has an actual wage loss. Currently, an actual wage loss is not required, only that the worker cannot return to the time of injury job. Rehabilitation benefits consists of vocational rehabilitation expenses upon certification by SRS, auxiliary benefits, up to $4,000 to 104 weeks of benefits complete a rehabilitation plan and an additional 10 weeks of benefits waiting for the plan to start, and eight weeks of job placement. The bill removes the 8 and 10 week payments, but job placement benefits will still be available for 104 week benefits. The Rehabilitation Plan is a new requirement which reduces workers wage loss. It also specifies that the plan must begin within 78 weeks of reaching maximum medical healing. The plan must be completed within 26 weeks of the anticipated completion date. The benefits for rehabilitation may only be received biweekly, and may not be paid in a lump sum. Currently, rehabilitation benefits can be terminated if a worker is not cooperating with the vocational rehabilitation providers in order to facilitate or return to work.

Ms. Butler stated the amendment would allow termination of any type of benefit, other than the impairment award and medical expenses. The lump sum provisions of the law will be changed, such as permanent partial benefits win a full settlement may be discounted. In addition, there would be requirements that the worker and the insurer agree on the settlement, with a limitation of $20,000. Lump sum advances have been removed. There are several new sections in the bill to require insurers to act promptly on claims, and to provide information to workers who obtain a 3rd party recovery, settlement, or reward. Recovery can not exceed 30% of the third part recovery. A new section allows the insurer to pay a medical claim without those payments being construed in acceptance of liability. In order to protect those rights, the insurer must notify the worker of a payment under that section, and upon request of the worker, determine

liability. Senate Bill 375 requires an injury entitlement to wage loss disability benefits be established by objective medical findings and substantiated by clinical findings, which means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm or other diagnostic evidence. The bill defines primary cause when a condition, such as a heart attack, is an injury to mean a cause that is responsible for more than %0% of the physical condition. Another section defines wages. There is a change to include the insurer is a party who can show good cause and a change to use more than the last 3 pay periods. Itemless and seasonal fluctuations are included in the longer calculation. Sole proprietors, partners, members, and managers, the LLCs and corporate officers will be required to give notice to their injurers within 30 days of the injury, rather than notice to themselves of an injury. The bill allows termination of temporary/total disability benefits upon release by the doctor to return to work in come capacity. The bill eliminates fourteen day notice previously required. If a worker is permanently disabled and also on retirement benefits, taken in lieu of a social security retirement benefit, the benefits can be terminated. Permanent partial benefits may be extended by the insurer beyond the current 26 week period. The bill clarifies that prescription drugs can be paid for under preferred provider organization and are not limited to the reimbursement of pharmacists. Benefits, currently can be terminated if the beneficiary is incarcerated for a felony. Under SB 375, benefits can be terminated for a misdemeanor over 30 days. The bill addresses two provisions in the occupational Disease Act. It amends a time in which claims must be presented from two years to one year, and if the time runs from the time the worker knew or should have known of the Occupational Disease, Act and clarifies that all the medical expense provisions in the injury act applies to the Occupational Disease Act **(EXHIBIT 5)**.

Laurie Ekanger, representing the Governor's Office, stated Governor Racicot urges support of SB 375. The Governor believes there are many State Fund successes, judging from past work and from current, aggressive management practices. Evidence of success is the fact that suggestions can be brought forward, and suggestions are now based on data. The proposals presented are based on a closed claim study of the Montana State Fund System, as well as comparison studies with other similar states. The legislative proposal addresses two major objectives. The system is responsive and the system offers timely service to the people it is supposed to serve. The Governor wants a comparable system with other states, and he wants to have very competitive rates. The Governor urged support of SB 375.

Chuck Hunter, Department of Labor and Industry, stated support of SB 375. **Mr. Hunter** read from the Declaration of Public Policy, a Compensation Act document, "under this system, claimants should be able to access benefits quickly and employers should be able to provide coverage at reasonably constant rates. The department is a proponent because the bill speaks clearly to the state

issues. Senate Bill 375 brings new insurer performance standards and requirements to the system and provides meaningful incentives to employers to bring an injured worker back to work without a loss of wages. Interpreted performance standards are needed because the system has not been good at providing good service to claimants. It takes an average of three months for a Montana insurer to accept liability for a claim. It takes about three months for an injured worker to receive a payment after the insurer has accepted liability. On average, it takes 154 days from the time an employee is injured until the time he/she receives a first benefit check, compared to an average of 29 days in ten other states, according to NCCI statistics. Senate Bill 375 beings new standards requiring insurers to make faster decisions on claims, provide more detailed information to injured workers, and, make timely payments when benefits are owed. The results will be better service for injured workers.

Wage loss and return to work are two large concerns, according to **Mr. Hunter.** In the recent past, legislation has attempted to encourage employers to bring workers back early. Senate Bill 375 provides, for the first time, incentives to bring the injured worker back early and at the same wage, as the pre-injury wage. Senate Bill 375 provides real incentives. Tying the permanent partial benefit to wage loss does two beneficial things. It gets injured workers back to work as soon as possible at the same wage and it gives employers some degree of cost control for the first time. **Mr. Hunter** urged support of SB 375 **(EXHIBIT 6).**

Rick Hill, Chairman State Fund, Board of Directors, Helena, MT, stated support of SB 375. The bill is a result of the closed claims study concerning claimants from the State Fund, private insurers, and self insurers. After the data was complied, the data was interpreted by a task force comprised of the Department of Labor and State Fund staff members. The group looked at cost drivers and rates. Montana rates are the second highest rates in the nation. The next closest rate comparison is Colorado, which has rates that are 23% lower. Colorado is considered a crisis state. The composite average rate of Utah, Idaho, South Dakota and Oregon is 44% lower than the Montana rate. State Fund tried to intelligently surmise the studies to ascertain if the studies really reflect what is going on in Montana. A main focus of study was centered on the ten largest and expensive payroll categories reported to the State Fund. The State Fund compared rates in Idaho and Oregon to Montana. Idaho rates were 36% lower, and Oregon rates were 42% lower. In 1993, Idaho paid a 22% dividend to their policy holders, further reducing their cost. Oregon paid a 10% difference to their policy holders during the same time period. **Mr. Hill** stated the NCCI advisory rates for private insurance companies are higher than the State Fund rates. Since 1983, Workers' Compensation rates, not premiums, have gone up over 311%. Since 1990, the rates have expanded by over 80%. Since 1991, the last time major reform was addressed, but the rates have gone up over 50%. These figures represent a $75M annual premium increase. In addition to the

payroll tax, employers pay to pay-off the Old Fund Liability Tax, the amount is over $100M. In 1993, 100,000 signatures were gathered in Montana to repeal HB 671, which was only a $33M economic impact. High State Fund costs originated from medical expenses, permanent disabilities, and particularly permanent/partial disabilities, from which people receive lump sum payments. From the entire study and internal focus, the State Fund discovered that Montana benefits are unique. It is easier to access the permanent partial disability benefits than other states. The total number of dollars paid, relative to the number of people who qualify for the permanent partial disabilities benefits, is substantially higher. **Mr. Hill** drew attention to the fiscal note and stated that the combined savings represented is just under $30M, 15% of the annual State Fund incurred liabilities. **Mr. Hill** urged support of SB 375.

David Owen, Montana Chamber of Commerce, Helena, MT, stated Workers' Compensation is not at the level it was in 1993. The flames have been put out of the 1993 State Fund crises, but there still is a problem. Chamber meetings are dominated by work compensation problems. **Mr. Owen** distributed a handout describing survey information **(EXHIBIT 7)**. Sixty percent of Montana businesspeople think their sales are going to increase, yet 60% of those responding to a Chamber questionnaire responded that they actively resist hiring new employees. Employment expansion is down, and the non-wage cost of jobs is going up. Making more take-home money a reality is not a reality. Chamber members hear about injured workers, who have received disability payments while still being paid wages, and question why. **Mr. Owen** reported the consensus opinion of 840 Montana businesses is that the employers cannot continue the benefits as they are now structured. The benefits need to be radically changed.

Bob White, Bozeman Chamber of Commerce, Bozeman, MT stated the *National's Business Magazine*, July 1992 reported the national, average, weekly premium cost per worker was $896. The average cost in local states have lower Workers' Compensation rates. A Montana Trucking company was told that if the company moved to Wyoming, they would receive a $79K cut in Workers' Compensation rate. **Mr. White** reported if the single business moved, Montana would lose $124K in Worker's Compensation; would lose $32,000 in income tax receipts and $18K in machinery taxes. It is time to understand Montana's need for SB 375 to pass and to help make business competitive. Montana has lost businesses and Union jobs, Every business must work to prevent losing other businesses to other states.

Riley Johnson, National Federation of Independent Businesses, stated over a decade , the legislature, the State, and small business owners have struggled over Workers' Compensation issues. Massive deficits, mismanagement, political "tinkering" and spiraling premium rates have plagued small business owners. **Mr. Johnson** stated he represents over 8,900 Montana NFIB members, who say, "Enough is enough". Positive steps were made in the 1993

Legislature. For the first time in a decade, the Workers' Compensation System is professionally run and customer conscience. Premiums have not raised for over 18 month. The job is not complete. The Workers' Compensation system is professionally run and customer conscience. Premiums have not raised for over 18 months. The job is not complete. The worker's compensation is the most important and burdensome problem facing Montana businesses. It is time to take the necessary start to help business **(EXHIBIT 7-A)**.

Charles Brook, Billings Area Chamber of Commerce, Billings, MT, stated historic concern about Workers' Compensations System in Montana. The Billings Chamber apposes the process that has been made as the changes in management have taken place. The Chamber's 1995 position paper's key element is "establish and clearly define the benefits of permanent/partial disability. Senate Bill 375 defines benefits clearly.

Steve Turkiewicz, Executive Vice President, Montana Auto Dealers Association, stated support of SB 375.

Steve Shapiro, Montana Nurses Association, Helena, Montana, submitted written testimony **(EXHIBIT 8 & 9)**. **Mr. Shapiro** stated the association offered an amendment to list advanced practiced, registered nurses, within the authorized health care providers. **Mr. Shapiro** is requested the committee to accept the Nurses' Association's amendment.

George Wood, Executive Secretary, Montana Self Insurers Association stated support of SB 375.

Jacqueline Lenmark, American Insurance Association, stated support of SB 375.

Jim Kemble, Liberty Northwest Insurance, stated support of SB 375.

Don Allen, Coalition for Workers' Compensation System Improvement stated support of SB 375. The coalition membership support has not been total or unanimous; but the majority opinion was, even though the coalition had concerns 2 ½ years ago, they do not want to cause loss to workers. The coalition wants both workers and employers to be treated fairly. The balance has been created by SB 375.

Kirk Langdon, Montana Motor Carriers Association stated strong support for SB 375.

Loren Davis, stated as an 27 year small businessman in Montana, he expressed strong support for SB 375.
Jim Nys, Businessman, Helena, MT, offered written testimony in favor of SB 375. He also submitted a composite package of approximately 15 individuals who support SB 375 **(EXHIBIT 10)**.

Don Buelke, Victor Veterinary Clinic, Victor, MT, submitted a composite package of approximately 37 individuals who support SB 375 **(EXHIBIT 11).**

Shawn Shanahan, RNC, MSN, Kalispell, MT submitted written testimony in support of reinserting Advanced Practice Registered Nurses, SB 375 **(EXHIBIT 12).**

Opponents Testimony:

Jerry Driscoll, Montana Buildings and Construction Trades Council, stated he has been involved with Workers' Compensation reform for many years. After the 1985 Legislative Session, Governor Schwinden called a private citizen select committee to study Workers' Comp problems. The study resulted in SB 330. The State Fund did not introduce the bill, but introduced their own bill, SB 315. The bill had as many signatures as SB 375. Subsequently, most reform was taken to the Supreme Court and repealed. **Mr. Driscoll** commented on permanent/partial disability rates for an injured worker prior to 1987. If the same law was on the books, the cost would be $91,750. After 1991, **Mr. Driscoll**, a former legislator, stated he carried a Workers' Compensation issue that reduced benefits from 500 weeks to a percentage of 350 weeks. Under the 1991 bill, the most seriously injured worker could get $55,233. Now, SB 375 proposed legislation would allows the most seriously injured worker to get $43,030. The percentage amount the injured worker could get of the 350 weeks is 27 percent multiplied by the impairment rate. A loss of a leg is about 40%. Over the years, the private sector has said State Fund rates were too low, and the private sector could not compete in Montana. From 1987 until 1991, there were no private insurance companies in the state, except insurers of national businesses. After the 1991 law, insurance companies returned to Montana. Now, the State Fund officials think private insurance companies are taking too large an amount of the insurance market. All through the 1980's, the Legislature passed bills that reduced the percentage of the State Fund Market. When this happened, the State Fund complained the costs were too high and that the State Fund need to cut benefits. There is nothing in SB 375 to cut administrative costs. Senate Bill 375 cuts benefits. Benefits for the permanent/partial disabilities have been cut by nineteen percent. Anybody who is seriously injured, in order to get 350 weeks, would have to have a 73% impairment rating, which is not a partial, but a permanent disability. Workers have cooperated to bring down costs, and the workers have taken cuts, almost every session.

Bill Shaw, Physician, Billings Clinic, 10 year Occupational Medicine Practitioner, voiced (verbatim) testimony in opposition to SB 375. "I spend the bulk of my time caring for workers who have work related injuries. I have some concerns about some specific points in this bill, and I would like to address them, if I may. Starting on page 7, lines 5 through 9, there is a definition for "secondary services." These are defined as

"services which are directed at the worker's impairment, but not at their disability. Unfortunately, if that is taken exactly as written, an individual who has had an amputation, a prothesis is directed at disability, not impairment. So, that provision of that prothesis would be at the discretion of the insurer. Unfortunately, there are not definitions that I can find in this legislation of "impairment". I would recommend that perhaps you consider that the definitions of "impairment" that are in the American Medical Association Guidelines for the Evaluation of Impairment, be put into this law as that definition.

Next, on page 8, lines 1 and 2. There are definitions of who can be an authorized treating physician. In that section, physician assistants are authorized only when M.D.s are not available. The effect on my office of this provision is that two physician assistants, who have between them over thirty years of experience, and particular expertise in occupational medicine and dealing with Workers' Compensation issues, are precluded from serving in that role. Whereas, physician assistants in more remote areas with less training and less supervision are allowed to serve in that role. It creates two classes of physician assistants. I don't think that is right or fair.

Third point, page 11, lines 9 through 11. This is the section that talks about no liability, after maximum medical improvement. This will leave patients unprotected because of pre-existing injury clauses in their own third party insurance. The results of this would be that an individual who has a back surgery for a herniated disk, under workers' compensation, once MMI has occurred and the patient their back again in a separate setting, they would no longer be covered through workers' compensation and, undoubtedly, their third party insurer would likewise not cover because of pre-existing conditions.
Number 4, page 16, lines 1 through 8. Definitions of functional capacity are definitions that have light lifting, ten to twenty-five pounds, medium 25 to fifty, and so on. Unfortunately, these definitions are far too narrow. While they may have applicability for a back injury, they are essentially irrelevant for injuries to many other parts of the body. Dr. Shaw recommended the definitions of light, medium, and heavy be expanded to include all the definitions under the Department of Labor Dictionary of Occupational Titles.

On Page 16, line 30, impairment is said to be established by objective medical findings. This supersedes the direction set forth in the AMA guides for impairment, and is therefore redundant. Dr. Shaw recommended that paragraph be stricken and paragraph B, above, will suffice. Dr. Shaw commented on one of the major premises of the bill, objective medical findings. As a physician, Dr. Shaw attested there are a variety of occasions in which individuals who have real and significant problems, which he has great difficulties in finding objective medical criteria, as outlined in the definition. The definition is difficult to understand. What will happen is the legislation will force

doctors to essentially play a word game in order to provide care for the patients with work related injuries.

Jim Hunt, Montana Trial Lawyers, Helena, stated opposition to SB 375. The proposed legislation will cause a great deal of litigation from claimants. **Mr. Hunt** expressed interest in the answer **Dr. Shaw** would give if **Dr. Shaw** was questioned about how many 73% impairment ratings he has given out during his medial career. The 1991 Workers' Compensation bill made it almost impossible to achieve 350 weeks worth of permanent/partial disability benefits. SB 375 requires a 73% impairment rating, a rating that doctors rarely give. Thus, the 350 weeks are impossible to reach. The 350 weeks were reduced down from 500 weeks in 1991, and the trade off was the rehabilitation benefits to workers. **Mr. Hunt** stated the rehabilitation benefits are being made more difficult to access in SB 375. The common example of claimants are 25 to 35 year old nursing home workers who suffer a back injury. Their salary is about $5 per hour, and they have no place else to "turn", other than Workers' Compensation. The State Fund or the insurance company staff assigns a rehabilitation provider, who tells them they can go back to work as a keno caller, night auditor, or some other similar position, even though the job may not be available to that particular nursing home employee. The injured worker is "out the door". The actual wage loss access to rehabilitation benefits is a serious problem to these types of employees.

Mr. Hunt stated the Montana Trial Lawyers object to the fourteen day notice. After times, the doctor tells the employee they can go back to work, and it is two or three months down the road before the injured worker finds out he or she can go back to work. If they access permanent partial benefits or rehabilitation benefits, the State Fund or the other insurance company will require the temporary total benefits be paid back. The demand is not fair to a claimant who does not have a clue what is going on. The lump sum provision ties the hands of both the claimant and the insurance company. The lump sum provisions are often used as a leverage by insurance companies when they say "employee, take this in a lump sum or else. Then, the company dramatically reduces the lump sum benefit. **Mr. Hunt** urged the lump sum benefits be taken out of SB 375.

Mr. Hunt expressed concern over the provision which allows the insurer to designate a rehabilitation plan. The claimant should have the right to choose their own rehabilitation provider. The claimant should be able to go to court, and have the Work Comp judge determine whether or not the rehabilitation provider is more reasonable than the rehabilitation provider selected by the insurer.

John Malee, Montana Federation of Teachers, Montana Federation of State Employees, asked to go on record as opposed to SB 375.

Lar Erickson, Montana State Council of Carpenters, urged support against SB 375. **Mr. Erickson** stated the council is also a member of the Work Comp Coalition, and represents the minority opinion of the Work Comp Coalition. The bill does nothing, but cut benefits. **Mr. Erickson** urged support against SB 375

Questions From Committee Members and Responses:

SENATOR EMERSON stated **Mr. Hill** identified medical expenses and permanent disabilities as the cause of the high cost of Workers' Compensation. **SENATOR EMERSON** asked why are medical expenses and permanent disabilities so high in Montana.

Mr. Hill replied the State Fund believe that Montana's history of over utilization is the reason why costs have soared. SB 347 allows for the implementation of managed care and preferred providers. **Mr. Hill** expressed hope the legislature will address the over utilization problem. The task force looked at typical cases regarding injuries, and then compared data between states. A task force report was distributed to all members of the Legislature. The State Fund chose Idaho and Oregon, the next two highest rate cost states to compare data. These states had a substantially different culture than Montana with regards to what happens when a workers get injured. In Idaho, 88 % of workers who have a time loss injury can return to work at the wage they earned at the time of injury. Compared, Montana has a 60 to 65 % range, based on the closed claim study. In Oregon, the benefits are not orientated to the lump sum permanent disability payment. Rather, as the disability gets greater, the worker is eligible for more retraining benefits. The emphasis in both states was to get the worker back to work, earning the same wage. The Montana benefit structure does not work the same way. In MT, 65% of the people receiving permanent/part time disability have no wage loss. Seventy-five percent of the benefits are paid for causes other than wage loss. Seventy-five percent of the benefits are paid for things other than for wage or loss, which doesn't create incentives for workers to go back to work. Employers do not have an incentive to take the workers back because even if they do, the worker is entitled to a substantial worker sum settlement. If Montana is going to solve the high cost of compensation problem, benefits must be structured to create a partnership between workers and employers to keep jobs open. Many time the worker does not have a job to go back to because the job has been replaced. There are no incentives to have the worker return to work early, and there is no way to substantiate the wage or to modify a job so the person's earning capacity is insured through the process. Montana is trying to rectify the problem this session.

SENATOR BARTLETT questioned **Carl Swanson** concerning the existence and the purpose of worker's compensation State Fund. **Mr. Swanson** stated many years ago the term used was "common law, negligent liability". The employee injured in the workplace had

to sue the employer for any compensation. The Workers' Compensation Act evolved from that situation, as did the exclusive remedy provision.

SENATOR BARTLETT asked **Mr. Swanson** what is the mission of the State Fund. **Mr. Swanson** replied the mission is to provide a market for Workers' Compensation coverage to employees in the state that wish to be insured. Workers' Compensation coverage is mandated by law. The mission statement goes on to discuss custom of focus for the State Fund organization.

SENATOR BARTLETT asked **Mr. Swanson** who are the customers of the State Fund. **Mr. Swanson** stated the State Fund has internal and external customers. For the purpose of the discussion, **Mr. Swanson** addressed the external customers. **Mr. Swanson** stated the State Fund has policy holders and injured workers as customers.

SENATOR BARTLETT asked **Mr. Swanson** what is the State Fund's obligation to the injured worker. Why are the injured workers considered a customer of the State Fund. **Mr. Swanson** replied that under the Workers' Compensation laws of MT, the State Fund needs to make an injured worker whole, according to Workers' Compensation statues. Private carriers would have to do the same for Workers' Compensation.

SENATOR BARTLETT stated the Nurses Association is interested in having advanced practiced, registered nurses be included as medical providers under the Workers' Compensation Act. **SENATOR BARTLETT** asked **Mr. Swanson** if the State Fund would accept the registered nurses as medical providers. **Mr. Swanson** deferred the question to legal counsel, **Nancy Butler. Ms. Butler** stated the Workers' Compensation Act defines the different types of providers that are treating providers. The list is meant to cover those medical providers who can provide gatekeeper services. Gate keeper services are services that will see the worker and see the worker as a whole, directing them appropriately. For instance, a dentist has a narrow scope of work. No other type of provider can do the type of work that a dentist does. So, the dentists are listed. Chiropractors, also, have a limited scope of practice. They see a huge percentage of injured workers, since their scope of practice is directed toward trauma. Workers' Compensation takes care of trauma. Physician assistants (PA) are listed because they are in an area where there are no physicians. Consequently, the PAs are the first line of care the injured worker may see. A nurse practitioners, who is practicing in an office with a physician, does not meet the gatekeeper role. Consequently, at this point, the State Fund objects to any amendment allowing advanced practice, registered nurses to be listed.

SENATOR BARTLETT asked **Jacqueline Terrell Lenmark** to comment about changes made to the Workers' Comp system concerning Plan 2 insurers in an attempt to accommodate all the consistent and inconsistent Workers' Compensation changes.

Jacqueline Terrell Lenmark, American Insurance Association (AIA), stated frequent legislative and court decision changes has increased costs for Plan 2 carriers. AIA rates on the basis of legislation. AIA perceives Montana judicial system as an active judicial system. Consequently, uncertainty is introduced and insurance companies find it difficult to rate without knowing what new changes will take place or what the cost of an injury might be. If the changes are adverse to AIA, the company does not have any place else to go for more premiums. The change has to be absorbed within the context of the system. Generally, a more stable system is more cost effective.

SENATOR VAN VALKENBURG queried **Mr. Hill** about the national premium rates. Why is Montana ranked second, while North Dakota is ranked fiftieth. What is the difference between the two state's economy regarding employment rates, average weekly wages, per capita income, and the number of bankruptcies. Why is it do much better in North Dakota than it is in Montana. **Mr. Hill** stated he cannot answer the question with the required completeness, at this time. Workers' Compensation costs are amongst the highest. Whenever trade journals look at Montana's benefit structures, the benefit structures are rated high. Trade journal data concerning Montana industry must impact the economy. **Mr. Hill** quoted from The Annual Worker's Compensation book, by expert, John Burton, 1995, "does high Workers' Compensation rates impact the economy of a state." The conclusion was that it did impact the economy. **Mr. Hill** cited three studies. One study reported for every dollar of increase in Workers' Compensation rates, workers suffer a $1.40 wage loss. The loss has to do with flexibility of the labor market. If there is an inflexible labor market, the economy loses jobs; and if the labor market is more flexible, the workers lose wages. Either way, the workers lose. Montana has a low average wage rate. Oregon moved from third to thirty-second after the state reformed the Workers' Compensation System. Oregon went from below to above the national wage rate. Montana continues to lose ground. Worker's compensation, **Mr. Hill** argued, is a significant factor.

SENATOR VAN VALKENBURG asked **Mr. Hill** about North Dakota. What is so much better about North Dakota than about Montana. The graphic difference could not be more. Montana is second, while North Dakota is fiftieth. For all practical purposes, there are many comparative similarities between Montana and North Dakota. **SENATOR VAN VALKENBURG** repeated his question, "What is it that makes the North Dakotan economy so much better than Montana's?" **Mr. Hill** stated the State Fund did not chose to study North Dakota, so he could not answer the question. The State Fund looked at Idaho and Oregon, and those facts have been related during testimony. Idaho and Oregon are the next highest cost states, compared to Montana.

SENATOR VAN VALKENBURG asked **Mr. Hill** what would the status of the Old State Fund Liability be today, if the 1993 Legislature, particularly the Montana Senate had not passed the employee

payroll tax legislation. **Mr. Hill** said he could not answer precisely since data is not currently available. Clearly, the employers/ employees payroll tax will pay down the liabilities. Current projection is the total deficit, which is not just the State Fund liability. The bonds are included, also. The amount is approximately $4.3M at the end of FY 94, down from $497M at the end of FY 93. **SENATOR VAN VALKENBURG** asked **Mr. Hill** about the likelihood of the State Fund getting legislation through the 1993 Legislative session if the State Fund had acknowledged the next step would be to reduce permanent/partial disability benefits by 19%. **Mr. Hill** stated he cannot answer the question.

CHAIRMAN KEATING asked **SENATOR BENEDICT** about benefits, laws, and language contained in the Oregon and Idaho statutes. **CHAIRMAN KEATING** voiced **Dr. Shaw's** alleged confusion regarding interpretation of statute language. **CHAIRMAN KEATING** asked for SB 375 language clarification in regards to the subject of objective medical findings. **Ms Butler** commented the bill is very similar to Oregon's statute. **CHAIRMAN KEATING** asked if the Oregon's statute language has been tested. **Ms. Butler** stated she understood interpretations have been made, but she has not seen court decisions. Interpretation is not as strong as originally thought, stated **Ms. Butler**, but it remains a tool. **CHAIRMAN KEATING** asked if the new definitions are modeled after another state's statute. **Ms. Butler** stated she did not recollect that the definitions were from another state, unlike the Oregon's objected medical findings. **CHAIRMAN KEATING** asked **Ms. Butler** to provide data concerning other state's misinterpreted experience, questionable interpretation, or tested language. **Ms. Butler** stated most of the changes in the bill, except the objected medical findings, are based on Montana experience from court decisions or claim handling. Most are not related to other states. The State Fund solicited input from experienced people to draft so that such problems would be avoided.

CHAIRMAN KEATING asked **Rick Hill** about the close case comparison study comparing benefits between cases. Were comparisons drawn between the amount of benefit and the amount of administration costs. The cost of the injury is not entirely all benefit, but also includes claims management cost. Was a comparison cost about claims management made? **Mr. Hill** stated the closed claim study did not address administrative cost by State Fund, private or self-insurers, but addressed medical costs. There are provisions in MT law that drives up medical costs, such as administrative functions and vocational rehabilitation elements. An eligible worker would be eligible for vocational rehabilitation. The State Fund studied that option and, as a matter of practice, offers a supplemental lump sum, which is eight weeks of temporary total disability. Most MT insurers offer the same. The law is a lifetime benefit.

CHAIRMAN KEATING paraphrased **Mr. Hill's** testimony to confirm the dialogue. Wage benefits, medical costs, are reviewed, but the

administrative comparison was not reviewed. **Mr. Hill** stated the State Fund did not.

Closing by Sponsor:

SENATOR BENEDICT stated the State Fund Administrative cost is 10.6%, some of the lowest administrative costs in the nation. **SENATOR BENEDICT** requested the committee to balance and stay focused on what needs to be revised in the system for the good of Montana employees and employers. Critics say that the system is not responsive. **SENATOR BENEDICT** asked the critics to "read the bill". Many complaints from employers and employees involved the lack of response from the insurers regarding claims information and the payment of claims. Senate Bill 375 serves notice and demands the legislature, on behalf of Montana injured workers, that claims are dealt with in a timely manner. The employee has the right to know promptly what benefits they are entitled to. The legislature says to insurers to get their act together. Get the checks to people on time and let people know immediately what the benefits will be. SB 375 is not a bill that just tightens benefits. SB 375 makes many changes in order to make the system better. Without changes, Montana will continue to lose ground in wages. **SENATOR BENEDICT** directed attention to the State Fund chart, located directly in front of the rostrum. The red visual aide information identifies the national weekly wage. The green graft information identifies Oregon's data. The average weekly wage in 1990 was below the national average. In 1990, Oregon reformed Workers' Compensation. In 1991, the graft caught up with the national weekly wage, and in 1992, the graft went significantly higher in the average weekly wage for employees.

SENATOR BENEDICT pointed to the blue chart, and stated the blue chart identifies Montana information. Montana is far below the national average. **SENATOR BENEDICT** stated the reason is due to extremely high rates in the employers' Workers' Compensation System, which does not allow for raises. In many cases, Workers' Compensation does not allow for basic benefits like health care. We need to reform the system, so we can get the employer's cost down in this state and provide higher wages and benefits for the employees. **SENATOR BENEDICT** stated SB 375 is necessary, the last piece of the reform puzzle. Senate Bill 375 needs to be passed to make $30M a year available to improve wages and benefits and to make Montana a place where Workers' Comp rates are a big incentive to business.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE February 16, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

Nancy Butler

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3 1 of 3
DATE Feb 16, 1995
BILL NO. SB ~~375~~ 375

SB375

Permanent Partial Disability

In the bill Wage loss and an impairment rating are required in order to access permanent partial benefits. Currently a physical restriction that impairs the workers ability to work is required.

Permanent partial disability benefits are modified. Five components make up permanent partial disability. Wage loss and impairments remain the same. Physical restriction has been reduced from a possible 20 or 15 or 10% to a possible 5 or 3 or 2%. The age and education components have been reduced from a possible 3 or 2% to 1%.

The impairment rating will be paid to a worker even though the worker does not suffer a wage loss.

~~However~~ the bill allows for potential reduction of the wage loss component if the worker is able to restore any wage loss through a vocational rehabilitation plan.

Vocational Rehabilitation

The definition of a disabled worker has been amended to mean a worker who is precluded from returning to the job held at the time of the injury and who has an actual wage loss. Currently an actual wage loss is not required, ~~just~~ only that the worker cannot return to the time of injury job.

Rehabilitation benefits currently consist of payment of vocational rehabilitation expenses upon certification by SRS, auxiliary benefits up to $4,000, up to 104 weeks of benefits to complete a rehabilitation plan, up to 10 weeks of benefits payable while the worker is waiting to begin a rehabilitation plan and up to 8 weeks of benefits for job placement. The bill removes the 8 and 10 week payments. Job placement benefits are still available to a worker with a wage loss under the 104 week benefit.

A rehabilitation plan must as a new requirement, reasonably reduce a workers wage loss.

It is also specified in the bill that a worker must begin a rehabilitation plan within 78 weeks of reaching maximum medical healing, and complete a rehabilitation plan within 26 weeks of the anticipated completion date.

It is also specified that a worker who is receiving the 104 week benefit to complete a vocational rehabilitation plan may only receive the benefit biweekly, and not in a lump sum.

Currently rehabilitation benefits can be terminated if a worker is not cooperating with the rehabilitation provider. To facilitate early return to work, an amendment would allow termination of any type of benefit other than the impairment award and medical expenses.

Lump Sum Conversions of Benefits

Currently a lump sum conversion of permanent partial benefits is not discounted under the law, and the agreement of the insurer is not required for a worker to receive the benefits in a lump sum. This bill provides for a discount on a settlement of permanent partial benefits and provides that the claimant and the insurer must agree to a lump sum conversion. A limitation of $20,000 on lump sum advances of permanent partial benefits is removed from the law in this bill.

Other Provisions of the Bill

There are several new sections in this bill.

New Section 4 requires insurer to act promptly on claims through several requirements. These include making payments within 14 days of accepting a claim, explaining to a worker the reason for denying a claim and notice of appeal rights, a written explanation of the calculation of wage loss benefits, timely payment of settlements and limitations on insurers when paying benefits under a reservation of rights.

New Section 1 clarifies that the Workers' Compensation Judge may grant a stay of the Workers' Compensation Court proceedings if a criminal action has been filed.

New Section 2 allows an insurer to reduce benefits paid or to be paid to a worker who obtains a third party recovery, settlement or award. The total reduction may

not exceed 30% of the third party recovery.

New Section 3 allows an insurer to pay a medical only claim without the payments being construed as an acceptance of liability. In order to protect the worker's rights, an insurer must notify a worker of the payment of the medical claim without acceptance of liability. Upon request of a worker for wage loss benefits or a determination of liability, the insurer is to investigate the claim to determine liability for the injury or occupational disease.

~~Other provisions~~

This bill requires that an injury and entitlement to wage loss disability benefits be established by objective medical findings. Which means ~~that~~ medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

The bill defines primary cause as used in the determination of whether ~~in a condition such as~~ a heart attack is an injury, to mean a cause that is responsible for more than 50% of the physical condition. In other words, the accident at work must be responsible for more than 50% of the heart attack in relation to other factors contributing to a heart attack, like risk factors such as smoking.

Definition of Wages

Notice of Injury

Termination of Temporary Total Disability Benefits

Termination of Benefits Upon Retirement

Extension of Temporary Partial Benefits

PPO's for Prescription Drugs

Termination of Benefits While Incarcerated for a Misdemeanor

Occupational Diseases

~~applicable provisions for payment of med. exp. in OD act to be consistent w/ WC Act.~~

Amending time in which claims must be presented and applying the medical expense provisions of the Workers' Compensation Act to the OD Act.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6 1 of 2
DATE Feb 16, 1995
BILL NO. SB 375

TESTIMONY ON SENATE BILL 375
CHUCK HUNTER - DEPARTMENT OF LABOR AND INDUSTRY

Mr. Chairman, members of the committee, for your record my name is Chuck Hunter, representing the Department of Labor and Industry. As the committee knows, we are the regulatory body for workers' compensation in this state.

We rise as proponents of this legislation, because it brings two needed changes to our worker's compensation system. First, it brings new insurer performance requirements and standards to our system. Second, it gives employers meaningful incentives for bringing an injured worker back to work without a loss of wages.

Insurer performance standards are needed because frequently our system is not working for injured workers. In a recent study of closed claims, we found that it takes, on average, three months for an insurer to accept a claim in our state. Once the claim is accepted, it takes almost that same amount of time for insurers to send out the 1st check to an injured worker. On average, it takes 154 days from the time a worker was injured to receive that 1st benefit check. Compare that to an average of 29 days in ten other states studied by NCCI - a difference of almost four months.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 of 2
DATE Feb 16, 1995
BILL NO. SB 325

This bill brings new standards requiring insurers to make faster decisions on claims, provide more detailed information to injured workers, and make timely payments when benefits are owed. The result will be better service for injured workers.

Let me turn to the second major system change - wage loss and return to work. Many of you have worked on return to work issues before. In 1991, this legislature passes early return to work language designed to encourage employers to start return to work efforts. In 1993, the legislature passed a temporary partial benefit also designed to help get workers back to work sooner.

This bill goes much farther, however, and for the first time provides real incentive for employers to bring an injured worker back to work at the same rate of pay as the pre-injury wage. Tying the permanent partial benefit to wage loss does two beneficial things, in our view - it gets injured workers back to work as soon as possible, at the same wage, and it gives employers a degree of control over benefits costs.

For these reasons, we encourage your support.

MONTANA CHAMBER OF COMMERCE

LEGISLATIVE BULLETIN

3

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7 1 of 2
DATE Feb 16, 1995
375

BUSINESS CONFIDENCE STRONG

MOST RESPONDENTS SEE EMPLOYMENT STEADY

The Montana Chamber sent members a "business ballot" which asked how they see their business and what they think the economy will do during the next six months. Local chambers in Bozeman, Hamilton (Bitterroot Chamber), Kalispell and Lewistown sent the same ballot to their members. The results below show the combined results and the results for each chamber

Summary. Nearly 60% of those who responded thought that their sales would increase in the next six months and approximately 50% thought that the Montana economy would move up during the same time frame. The ballot asked if the number of employees in the member's firm would change during the next six months. In spite of the confidence shown in sales and the economy, only 22.4% said their employment would increase while the majority (65.5%) indicated they saw no change.

"This is exactly what businesses told us during three tours of the state over the past 18 months" said Chamber President David Owen. "Uncertainty over a health care mandate, workers comp costs and the paperwork of having employees were a constant point of discussion, many members said they wanted as few employees as possible." The ballot also asked members if they were resisting the need for more employees and 56.6% said yes.

The Chamber asked if members had employees threatened or file suits (wrongful discharge or complaints with the Human Rights Commission). Nearly 20% of the businesses reported threats of suits by employees with about 10% saying charges were actually filed.

See box at left for questions from the survey.

BUSINESS BALLOT RESULTS

SIX MONTH SALES OUTLOOK

	Overall	MT Chamber	Bozeman	Hamilton	Kalispell	Lewistown
Number of Respondents	325	90	88	81	43	23
UP	59.2%	57.3%	61.4%	61.3%	57.1%	54.5%
DOWN	16.3%	19.1%	13.6%	16.3%	16.7%	13.6%
NO CHANGE	24.5%	23.6%	25.0%	22.5%	26.2%	31.8%

SIX MONTH EMPLOYMENT OUTLOOK

	Overall	MT Chamber	Bozeman	Hamilton	Kalispell	Lewistown
UP	22.4%	27.8%	29.5%	13.6%	14.3%	17.4%
DOWN	12.1%	20.0%	8.0%	11.1%	11.9%	0.0%
NO CHANGE	65.5%	52.2%	62.5%	75.3%	73.8%	82.6%

MONTANA ECONOMY NEXT SIX MONTHS

	Overall	MT Chamber	Bozeman	Hamilton	Kalispell	Lewistown
UP	50.7%	47.8%	50.0%	47.5%	48.8%	60.9%
DOWN	13.8%	16.7%	10.2%	17.5%	16.3%	8.7%
NO CHANGE	35.4%	35.6%	39.8%	35.0%	34.9%	30.4%

RESIST NEED TO HIRE NEW EMPLOYEES

	Overall	MT Chamber	Bozeman	Hamilton	Kalispell	Lewistown
YES	56.6%	62.9%	54.5%	61.3%	52.4%	39.1%
NO	43.4%	37.1%	45.5%	38.8%	47.6%	60.9%

EMPLOYEE THREATEN SUIT

	Overall	MT Chamber	Bozeman	Hamilton	Kalispell	Lewistown
YES	19.5%	36.7%	17.0%	12.3%	7.0%	8.7%
NO	80.5%	63.3%	83.0%	87.7%	93.0%	91.3%

EMPLOYEE FILE SUIT

	Overall	MT Chamber	Bozeman	Hamilton	Kalispell	Lewistown
YES	10.0%	21.1%	3.4%	6.2%	7.0%	4.3%
NO	90.0%	78.9%	96.6%	93.8%	93.0%	95.7%

MONTANA CHAMBER OF COMMERCE

LEGISLATIVE BULLETIN
2

SENATE LABOR & EMPLOY
EXHIBIT NO. 2 of
DATE Feb 16,
NO.

WORK COMP BENEFITS BATTLE CERTAIN

Senator Benedict, (R-Hamilton), is developing a major workers' compensation bill, LC 746, that is guaranteed to spark debate when introduced this week. The bill's purpose is to tighten access to indemnity, medical and rehabilitation benefits and to address the apparent high cost of permanent partial injuries.

There is little doubt Montana's work comp system experienced extraordinarily high costs from the 80's through 1991. The data in the tables below, prepared by the National Foundation for Unemployment and Workers Compensation, clearly show Montana as a high cost state.

Critics of the Benedict bill are likely to argue that fixes in Montana's workers compensation system in the '91 and '93 sessions have taken care of the cost problem. Moreover, the same critics are expected to challenge the results of State Fund's recent Closed Claim Study as not reflective of recent claims and overall improvements in the system.

Despite the expected debate over data and the validity of recent studies, the Chamber believes the Benedict bill will clearly point up the need for adjusting downward current benefits for those who are able to return to work at the same or higher salary than was earned at the time before injury occurred.

STATES RANKED BY AVERAGE BENEFIT COST PER EMPLOYEE for 1991, 1990 and 1987

(1=lowest average benefit cost per employee)

State	1991 Rank	1990 Rank	1987 Rank
Alaska	46	46	51
Colorado	40	40	39
Idaho	23	25	25
Indiana	**1**	**1**	**2**
Montana	**45**	**45**	**49**
N. Dakota	17	14	18
S. Dakota	9	10	10
Utah	8	17	20

(Rankings include District of Columbia)

STATES RANKED BY BENEFIT

Benefits paid as a % of payroll

COST PER EMPLOYEE for 1991, 1990 and 1987

(1=lowest cost benefit rate)

State	1991 Rank	1990 Rank	1987 Rank
Alaska	32	40	48
Colorado	35	41	37
Idaho	23	29	33
Indiana	**2**	**2**	**1**
Montana	**48**	**50**	**51**
N. Dakota	23	23	24
S. Dakota	22	24	22
Utah	9	22	23

(Rankings include the District of Columbia)

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7-A 1 of 2
DATE Feb 16, 1995
BILL NO. SB 375

NFIB Montana

National Federation of Independent Business

YMENT

TESTIMONY

before

SENATE LABOR & EMPLOYMENT RELATIONS COMMITTEE

by

J. Riley Johnson
State Director
National Federation of Independent Business

February 16, 1995

Mr. Chairman and Members of the Committee:

For over a decade, this esteemed body, the State of Montana and indeed the small business owners of Montana have struggled with workers' compensation. I need not reiterate here this morning the tales of massive deficits, mis-management, political tinkering and spiraling premium rates that plagued Montana's small business owners. I come before you today representing over 8,900 NFIB members in Montana who say "enough is enough". This body took the first positive toward mending the wounds of workers' compensation in 1993. For the first time in a decade, the workers' compensation system is professionally run, customer conscious and it has not raised our premiums in over 18 months.

But the job is not done. Montana's small business community still suffers under some of the highest benefit level in the nation. SB 375 addresses these benefits, and NFIB/Montana looks to you to recognize this fact and to join our organization in helping to pass this bill.

My members have told me a hundred times over that workers' compensation is the most burdensome problem they face in business today. To demonstrate this believe, I bring you testimony this morning from over 50 NFIB/Montana business owners who are asking for your help. I have distributed these messages to the committee, and I ask that each of you takes the time to read what small business owners in Montana are saying. I will let these folks, the small business job generators of Montana, talk for me.

I urge your support for SB 375.

-30-

State Office
491 S. Park Ave.
Helena, MT 59601
(406) 443-3797

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8 1 of 2
DATE Feb 16, 1995
BILL NO. SB 375

February 16, 1995

Steven J. Shapiro
Montana Nurses Association

Testimony on Senate Bill 375
regarding the Workers Compensation Act

I am Steven Shapiro representing the Montana Nurses Association. MNA is composed of 1,400 registered professional nurses working in all phases of health care across the State of Montana.

Senate Bill 347 was passed in the 53rd Legislature amending various health care provisions in the Workers' Compensation Act. Section 39-71-116, MCA, was amended with a definition of "treating physician" to include a medical doctor, chiropractor, physician assistant, osteopath or dentist. Since the bill was enacted, it has been noted that advanced practice registered nurses were apparently inadvertently omitted from this definition.

Advanced practice registered nurses provide primary health care in a variety of settings in Montana and the United States. Many of them are authorized by the State Board of Nursing as independent health care practitioners, some including the authority to prescribe medications. However, they have been denied reimbursement by workers' compensation insurers because of the oversight in Senate Bill 347 (1993).

We ask the committee to adopt the attached amendment to Senate Bill 375 which would add in advanced practice registered nurses in the definition of "treating physician" in Section 39-71-116, MCA.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 of 2
DATE Feb 16, 1995
BILL NO. SB 375

February 16, 1995

Steven J. Shapiro
Montana Nurses Association

Amendment offerred to Senate Bill 375

Section 5. [amending 39-71-116, MCA]

Subsection (31)

Subsection (d); following "Title 37, chapter 5;" *strike* "or"

Subsection (e), following "Title 37, chapter 4."

insert " ; or

"(f) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8."

-END-

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE Feb 16, 1995
BILL NO. SB 375

Northwest Women's Health Care
Gynecology Infertility

CHARLES B. LUDDEN, M.D., P.C.
Diplomate of the American College of Obstetrics and Gynecology
Fellow of The American College of Obstetrics and Gynecology

75 Claremont Street • Kalispell, Montana 59901 • 406 752-8282 • FAX 406 257-2225

February 21, 1995
RM 439
SEC. MARY F.

Senate Committee Members
Labor & Employment Relations Committee

RE: **Senate Bill #375** - Sponsored by Steve Benedict

Dear Committee Members:

This letter is in support of Senate Bill #375 recognizing Advanced Practice Nurses for reimbursement through the Workman's Compensation Program.

As has been well documented, Advanced Practice Nurses deliver an extensive amount of health care to rural and urban Montanans. I feel it would be an omission to quality care to limit reimbursement to this provider for care of Montana citizens.

Yours truly,

Susanne

Susanne Burgess, R.N., W.H.C:N.P.

SB/mh

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10 1 of 16
DATE Feb 16, 1995
BILL NO. SB 375

Members of the Senate Labor Committee

My name is Jim Nys, I am a business man here in Helena. I urge your support of SB 375 in order to reduce the workers' compensation benefits paid to workers under current law.

In the eight years I have been in business I have had only two injuries which were for more than a few hundred dollars.

1. Three years ago, I had a worker who was hired for a two week job. The worker completed the job without incident. Three weeks later, she filed a claim with state fund stating she had pinched a nerve. Aside from the fact that state fund neglected to check out my evidence of fraud, the employee was placed on temporary disability. I discussed the claim with the individuals "rehab" counselor who informed the claimant was fine and could return to work. We made numerous attempts to contact her for return to work and she refused. I thought that would be the end of the issue. When I received my premium modification report for the next year, I learned my "mod factor" had increased 34% because of the cost of paying the former employee's temporary disability and permanent disability. The permanent disability payment was, as I remember it, 5%. By the time the various additives for age and reduction for lifting capacity were added, she had a 28% disability rating and a check for $14,000 in settlement. Even ignoring the issue of possible fraud it seems excessive given the fact that work was available to her and the rehab counselor released her with no restrictions. I also question if the practice of providing higher compensation to an individual based solely on their age violates the MONTANA CONSTITUTION and the GOVERNMENTAL CODE OF FAIR PRACTICE's prohibition on age discrimination in services by a state agency.

2. Last year, my modification factor went up an additional 45% based on a payment made to a woman who through out her neck while pulling up her panty hose in the bathroom at work. I must admit I am probably remiss under the Safety Culture Act for not having conducted training for my employees on the safe operation of this equipment.

Even though I believe in the principle of workers' compensation coverage for injuries in employment, I believe the current statute creates windfalls for some individuals that are out of proportion to the loss they have suffered. This bill is a step in the right direction to solve this problem, to allow us to enjoy lower workers' compensation premiums and to put that money in the pocket of productive employees as wages increases.

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

VICTOR VETERINARY CLINIC

DONALD L. BUELKE, DVM, MS

100 CRITTER WAY
VICTOR, MONTANA 59875

PHONE (406) 642-3471

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11 1 of 36
DATE Feb 16, 1995
BILL NO. SB 375

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

fax transmittal

to:	Rep. Steve Benedict Senate Labor Committee
fax:	449-4218
from:	Don Buelke
date:	February 16, 1995
re:	Worker's Compensation Reform
pages:	1

NOTES: I strongly support your effort to reform Work Comp benefits. In the 25 years I have done business in this state, it has always appeared that benefits were out of line for prevailing wages. And over the years I have personally known individuals who "played" the system for all they could get, while paying rates much higher than colleagues in other states.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 12 1 of 1
DATE Feb 16 1995
BILL NO. SB 375

SHAWN SHANAHAN, R.N., W.H.C.N.P.

Womens Health Care Nurse Practitioner

Montana Licensed
1292 Barns Way
Kalispell, Montana 59901
Telephone (406) 752-0303
Fax (406) 752-0314

Room 439
Mary Florence

February 20, 1995

Members of Senate Labor and Employment Relations Committee

Re: Senate Bill 375 sponsored by Steve Benedict

Please reinsert Advanced Practice Registered Nurses in the list of approved providers in the Workman's Compensation Act as submitted by the American Nurse's Association by voting FOR Senate Bill 375 on February 22.

Thank you,

Shawn Shanahan, RNC, MSN

Shawn Shanahan, RNC, MSN

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1of1
DATE Feb 16, 199
BILL NO.

DATE February 16, 1995
SENATE COMMITTEE ON Labor & Employment Relations
BILLS BEING HEARD TODAY: SB 375 + SB 374

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
John R. BANDY	MT Claims Service	374		X
W James Kembel	Liberty Northwest Ins.	374		X
Rick Hull	State Fund BCD	374	X	
Charles R. Brooks	Billings Chamber	SB 375	X	
Carl Swanson	State Fund	374	X	
Steven Shapiro	MT Nurses Assn	375	✓	
Don Judge	MT STATE AFL-CIO	SB 375		X
Tom Foley	AFSCME			X
John Davis	Business	375		
George Hagerman	AFSCME	375		✓
Jerry Driscoll	MT State Building Trades	374 375		✓
CARL ERICSON	CARPENTERS	374 375		✓
Kent Kleinkopf	BCRC	374 375		X
Larry Tawwater	Wilson Corporation	374 375		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1011
DATE Feb 16 1995
BILL NO. SB 375

DATE February 16, 1995
SENATE COMMITTEE ON Labor + Employment Relations
BILLS BEING HEARD TODAY: SB 375 + HB 564

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
William Shaw	Billings Clinic	375		X
~~John R. Bandy~~	~~MT Chamber Service~~	~~375~~		
William James Kembel	Liberty Northwest Ins	375	X	
Rich Hill	State Fund Bd	375	X	
Charles R. Brooks	Billings Chamber	375	X	
Robert White	Bozeman Chamber	375	X	
Chuck Hunter	D.O.L.I.	375	X	
Steve Turkiewicz	Mt. Auto Dealers Assn	375	X	
Curt Laingen	MT Motor Carriers Assn	375	X	
Debbie Berney	PIA - Prof. Ins. Agts of MT	375	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 of 1
DATE Feb 16, 1995
BILL NO.

DATE 2/16/95

SENATE COMMITTEE ON

BILLS BEING HEARD TODAY:

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
George Wood	Mt Self Insurers Assoc	375	X	
Jacqueline Lenmark	Am. Ins. Ass'n	374		X
Jacqueline Lenmark	Am. Ins. Ass'n	375	X	
Henry Murphy	MFT/MFSE	375		X
Riley Johnson	NFIB	SB 374 X SB 375 X		
Greg Van Horssen	State Farm Ins. Co.	374		X
Greg Van Horssen	State Farm Ins. Co.	375	X	
KEITH L. OLSON	MT. Logging Assn.	374	✓	
Jim Hunt	Mont Trial Lawyers	375		✓
John McAlear	M.F.T.	375		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 18, 1995, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused:
Sen. Steve Benedict (R)
Sen. James H. "Jim" Burnett (R)
Sen. Larry L. Baer (R)

Members Absent: No members were absent.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 348, SB 354, SB 384

Executive Action: SB 348, SB 375, SB 354, SB 384, SB 374, SB 110

{Tape: One; Side: One}

HEARING ON SB 348

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, Big Timber, MT, SD 13, stated SB 348 deals with the tax Workers' Compensation insurers pay to fund the Department of Labor's budget. Specifically, the monies go for administrating the Work Comp program. All insurers pay the tax. For FY 95, the amount was approximately $4M. The Department sets the budget and passes on the cost to the insurers by levying the tax. There is no limit on the Department's budget and the increases are reflected on the increases of the tax. The amount reflects an unfunded mandate. The bill was intended to limit the

EXECUTIVE ACTION ON SB 375

Motion:

SENATOR BENEDICT moved SB 375 DO PASS.

Discussion:

SENATOR BARTLETT stated she would like to note for the record that she is severely disappointed in the State Fund for bringing major, major pieces of legislation to the legislative session at such a late date. **SENATOR BARTLETT** stated she would remind the committee members who were in the 1993 Legislative Session and the new 1995 members that Workers' Compensation was a major 1993 issue. All bills went through a Select House Committee, the House Labor committee, a Select Senate committee, and though Senate Labor and Employment Relations committee. The process was coordinated. In contrast, the legislature has had no coordination of State Fund legislation this session. If this is a sample of what the legislature has been led to believe to be improved State Fund administration, there is a tremendous amount of improvement that has yet to be realized. **SENATOR BARTLETT** stated she is very disappointed in the State Fund for the timing on the amendments. **SENATOR BARTLETT** stated the disappointment is something she will not forget.

SENATOR BENEDICT responded stating SB 375 is his bill, not the State Fund's bill. The draft of SB 375 was submitted to the AFL-CIO on December 10, 1994. The legislature has worked through the process. The only reason SB 375 is as late in the session as it is that he, **SENATOR BENEDICT**, tried to bend over backwards to get absolutely everybody that wanted an opportunity to have some "finger prints" on the bill, that opportunity. Finally, on about February 3rd or 4th, we finished getting comments and started sifting. We put together a bill that tried to address as many concerns as possible. **SENATOR BENEDICT** stated he really does not believe the State Fund had anything to do with the lateness of the bill. **SENATOR BENEDICT** stated he would like to go on record of saying the State Fund has done an absolutely great job of coming along in the last couple of years.

SENATOR VAN VALKENBURG replied that he was sure **SENATOR BENEDICT** did his best to try to reach out to everyone he thought would be interest in SB 375, but not everyone was included, including himself. **SENATOR VAN VALKENBURG** stated he doesn't converse daily with the AFL-CIO, but he had not heard anything about SB 375 until two days before it was heard in committee. **SENATOR VAN VALKENBURG** stated he want to make the point that in his opinion the payroll tax on employees would have never passed last session were it not for the efforts of Democrats in the Senate to try to really do something to solve a significant problem. **SENATOR VAN VALKENBURG** maintained that if he had known in 1993 that the 1995 Session would have a bill that just cut benefits like SB 375 does, the Democratic effort would never had happened, not at all.

SENATOR WILSON stated he would agree with both **SENATORS BARTLETT AND VAN VALKENBURG's** assessments. He remembers the 1993 scars of compromise. **SENATOR BURNETT** stated he was in the 1973 Session when the New Constitution implemented payroll taxes. The assembly was controlled by the Democrats and there was a Democratic Governor. The unions, in tandem with the Democrats slipped everything through.

Vote:

The DO PASS motion for SB 375 PASSED. A roll call vote was taken, with SENATORS BARTLETT, VAN VALKENBURG And WILSON voting NO.

EXECUTIVE ACTION ON SB 354

Discussion:

Ms. McClure stated she distributed the Forrester amendment to the committee members. **(EXHIBIT 23). Ms. McClure** remarked that **SENATOR FORRESTER** stated to her that the amendments are just the first of a few amendments that the committee and he could agree on. When the bill goes to the floor, there may be other amendments. The amendment deals with issues commonly brought up in testimony. **J. Lenmark** proposed the amendment, and **SENATOR FORRESTER** wanted the amendment changed. One page 3, clarification is made for proof of compliance with Workers' Compensation laws, rather than coverage. They want proof of compliance with unemployment insurance laws. Washington State calls their agents "statutory agents", and Montana calls the agents, "registered agents", and the agents are required. So, the amendment strikes "statutory' and "if any,". **SENATOR FORRESTER** stated information was brought forward in the fiscal note. The limited liability companies also had to be addressed and that function was taken care of in amendment, number 4. The last amendment is on page 4, line 12. **Mr. David Cooley** suggested the phrase "or any applicable exemption terminates" is inserted following the word "expires". The certificate is valid until the date the insurance expires "or any applicable exemption terminates". To make it perfectly clear with amendments 1 and 2, that the independent contractors' exemption would be received.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 354, 35401. The amendments were approved by SENATOR FORRESTER.

Vote:

The motion to amend SB 354 CARRIED UNANIMOUSLY.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE February 18, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
-- REREFERRED ---- DATE READ

SB0350		2/20	3/14		CONCUR AS AMENDED	3/15	VOTE: 10-8		3/16
SB0354	FORRESTER, GARY	2/27	3/15	REGISTRATION OF CONSTRUCTION CONTRACTORS BY DEPARTMENT OF LABOR	CONCUR AS AMENDED	3/21	VOTE: 16-2		3/22
SB0374	HARP, JOHN	2/27	3/08	REVISE CERTAIN LAWS RELATING TO THE STATE FUND	CONCUR AS AMENDED	3/9	VOTE: 16-2		3/09
SB0375	BENEDICT, STEVE	2/27	3/06	REVISE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS	CONCUR	3/7	VOTE: 12-6		3/07
SB0376	CHRISTIAENS, CHRIS	2/20		REGULATE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS			VOTE:		
SB0384	BENEDICT, STEVE	2/27	3/06	WORKERS' COMPENSATION COMPETITIVE RATING ACT	CONCUR	3/7	VOTE: 18-0		3/07
SB0392	GAGE, DELWYN	2/22	3/07	GUBERNATORIAL PARTICIPATION IN PACIFIC NW ECONOMIC REGION	CONCUR	3/7	VOTE: 18-0		3/07
SB0400	GROSFIELD, LORENTS	2/22	3/07	REQUIREMENTS FOR FLOW THROUGH HOT SPRINGS POOLS	CONCUR	3/7	VOTE: 18-0		3/07
SB0408	SPRAGUE, MIKE	3/04	3/15	MONTANA STATE LOTTERY CONTRACTS FOR SUPPLIES AND SERVICES	CONCUR AS AMENDED	3/15	VOTE: 16-2		3/16

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 6, 1995, at 10:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: Rep. Jon Ellingson

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 375, SB 384
Executive Action: HB 574

HEARING ON SB 375

Opening Statement by Sponsor:

SEN. STEVE BENEDICT, SD 30, Ravalli County, said this bill was an act generally revising workers' compensation and occupation disease laws; authorizing payment of medical claims without

acceptance of liability; requiring insurers to act promptly on claims; defining "objective medical findings" and requiring injury and disability to be established by objective medical findings; revising the definition of "injury"; defining actual wage loss; revising requirements to receive permanent partial disability benefits; revising provisions regarding termination of benefits upon retirement; revising provisions for lump-sum conversions; allowing suspension of benefits while a claimant is incarcerated for a misdemeanor; revising the definition of disabled worker; exempting payment agreements between a preferred provider organization and an insurer from prescription drug payment limits; revising rehabilitation benefits; authorizing the workers' compensation court judge to stay proceedings in certain circumstances; revising the definition of "wages"; authorizing a reduction of benefits for third-party recoveries; authorizing the termination of temporary total benefits upon notification of a worker's release to return to work; requiring a sole proprietor, partner, corporate officer, or manager or member of a limited liability company or a designee to provide notice of injury within 30 days; authorizing termination of certain benefits for noncooperation with a rehabilitation provider; revising the filing time for occupational disease claims; revising provisions for payment of medical expenses in occupational disease claims and extending temporary partial disability benefits.

Proponents' Testimony:

Nancy Butler, General Counsel, State Fund, explained the sections in the bill.

Laurie Ekenger, Governor's Office, said he supported the bill but there are two major objectives for the system. The system provides good responsive time and service to the people that it is designed to help which are the workers and employers of Montana. The second factor is the rates for Montana should be as competitive as they can possibly be. There have been many successes in the Workers' Compensation system because of the work of management teams and the work of the legislative body. There is now some statistical data to move forward with, and the proposals in the bill which were based upon a close claim study and comparison with other states.

Chuck Hunter, Department of Labor and Industry, said they favored this bill. There are some very good system improvements which bring new insured performance standards to workers' compensation. This bill would enable faster payments to beneficiaries, provide more detail to injured workers and make timely benefit payments when they are ready. The result will be better service. The time of wage loss and return to work is another objective.

Rick Hill, Board of Directors, State Fund, explained the charts which he had displayed on the various percentage factors of workers' compensation benefits.

Terry Menton, Chairman, Coalition for Workers' Compensation System Improvement, said this bill would tighten and bring into qualifications to receive wage loss and rehabilitation benefits. It would provide for those truly deserving.

David Owen, Chamber of Commerce, indicated they supported the bill.

Riley Johnson, National Federation of Independent Businesses, provided written testimony from several proponents of the bill. **EXHIBIT 1**

Robert White, Chamber of Commerce of Bozeman, said they supported the bill.

Harlee Thompson, Manager, Intermountain Truss and Treasurer, Workers' Compensation Improvement, said Montana has the highest Workers' Compensation rates and the highest Workers' Compensation benefit structures in the nation and the lowest wages in the nation. **EXHIBIT 2**

Charles Brooks, Chamber of Commerce in Billings, said they had a deep concern for the need of major reform in the Workers' Compensation system. There are, however, some concerns which should be addressed. The establishment and clearly defined benefits of permanent partial disability and adjustments and the restructure of benefits were also discussed. **EXHIBIT 3**

Steve Turkiewicz, Executive Vice President, Montana Automobile Dealers Association, supported this bill.

Kurt Langin, Montana Motor Carriers Association, stated they supported this bill.

Joe Roberts, Rehabilitation Association of Montana, supported the bill.

Jim Kembel, Liberty Northwest Insurance Corporation, supported the bill.

George Wood, Executive Secretary, Montana Self Insurers Association, supported the bill.

Jacqueline Lenmark, American Insurance Association, supported the bill.

Bob Worthington, Program Administrator, MMIA, said they insured towns across Montana and supported the bill.

Opponents' Testimony:

Jerry Driscoll, Montana Building Construction Trades Council, said there are no safety engineers ever sent from the State Fund to make certain a working place is safe. The Safety Culture Act

was drafted last session which has never been implemented. Under the 1987 law, after 18 months of study of 18 private citizens and two legislators decided to have the State Fund introduce their own bill. Under that law it was guaranteed 500 weeks of wage loss if there was one-half of one percent impairment. The 1991 law was a percent of 350 weeks plus trying to get some true rehabilitation. The average now is 103 weeks. The rates in this state were artificially set by politics. Since 1987 politics needed to get out of the rate making.

Jennifer Drueger, President, Montana Academy of Physician Assistants, said they opposed this bill because of the restrictions placed on physician assistants. This bill would restrict the treating of Workers' Compensation patients unless a physician is unavailable. **EXHIBIT 4**

Russell Hill, Executive Director, Montana Trial Lawyers Association, said this bill allows the State Fund to publicly declare its love for Montana's most vulnerable workers while privately abusing and humiliating them with no fear of accountability. **EXHIBIT 5**

Don Judge, Montana AFL-CIO, said this was bad legislation and also stated they were willing to work with anyone on the Workers' Compensation system of Montana. Labor was never involved in drafting this bill. It is not a good bill.

Randy Spear said the current political forces can tolerate more intrusive government. There is no promise of cost savings in this bill's current language. **EXHIBIT 6**

Steve Shapiro, Montana Nurses Association, stated the committee should adopt the amendments which would add in the advanced practice registered nurses in the definition of treating physician. **EXHIBIT 7**

Norm Grossfield, Attorney, Claimants and Insurers, said he was involved in the compromises in 1991 and 1993 and considered some of the efforts are a breach of the understandings which were reached. There are concerns about subrogation.

<u>Informational Testimony</u>:

Ann K. Ingram, Occupational Health Services, EXHIBIT 8; Bill Shaw, M.D., Billings Clinic, EXHIBIT 9; David Johnson, The Billings Clinic, EXHIBIT 10

<u>Technical Testimony:</u>

Stan Kaleczyc, National Council on Compensation Insurance, said they estimate the impact legislation such as this bill would prospectively have, would have a great affect on rates in Montana. This analysis has now been completed and was not done at the time of the hearing in the Senate. If the bill is adopted

as presented there is no change in rates and with this bill in place there would be a 10.3% decrease in rates in the advisory filing.

TAPE 1, SIDE B

Questions From Committee Members and Responses:

REP. VICKI COCCHIARELLA asked what the potential risk is to the state regarding erosion of exclusive remedy. **Mr. Grossfield** said his concerns were that in 1987, groups negotiated agreements in the reductions in benefits. Permanent partial benefits were discussed with a decrease in time and rehabilitation benefits. This bill does just the opposite. Now the rehabilitation industry will come back and individuals can do anything they want and therefore this negates almost in its entirety, a rehabilitation program. It also negates any true permanent partial benefits because of the involvement of the wage loss scheme. It removes the objectivity. The Supreme Court has said that because of the constitution, full subrogation recovery cannot be achieved unless the claimant has been made whole.

REP. PAVLOVICH asked what would have happened if this bill would have been in effect before 1973. **Mr. Hill** said this law proposes at the point at which the claimant is released to return to work, benefits would be terminated instead of a 14-day notice.

REP. LARSON said he was convinced the high rates were the fault of the inflater, the middleman and the lawyers. He then asked for discussion on the physicians assistants' amendments. **Mr. Hill** said they were not opposed to working for the State Fund. The law is where there are not other treating physicians, then they can be a treating physician.

REP. MILLS questioned the lack of safety inspections from the perspective of the agency. **Carl Swanson, President, State Fund,** said there is a high priority on safety over the past year. Much is happening focus-wise in the safety area. The importance of that department has been elevated. There is a strategic business plan in operation which focuses on various aspects of safety. There are approximately 275 employers who benchmark the severity of accidents. He said he disagreed with **Mr. Driscoll's** comments. **REP. MILLS** asked how many inspections had been done. **Mr. Swanson** said over the past year 96 safety education workshops, 1,737 customers received safety surveys. There are a significant number of consulting services on job hazards and safety in 2400 policy holder locations. **REP. MILLS** said his question was specific as to how many safety inspections on site have been made in the last two years. **Mr. Swanson** said 2,401.

REP. EWER asked if permanent partial disability benefits were a typical benefit. **Mr. Hill** said yes. **REP. EWER** asked if states predicate those that must be an actual wage loss as a result of the injury for someone to be cut from permanent partial

disability. **Mr. Hill** said the formulas most states pay an impairment payment. Some states have a supplemental disability benefit and some require wage loss be an element. **REP. EWER** asked if the impairment was the only feature of the bill. **Mr. Hill** said if the person does not incur a wage loss, the only thing they would be entitled to is impairment.

REP. COCCHIARELLA asked for **SEN. BENEDICT'S** ideas on cutting benefits and his previous statements in another hearing. **SEN. BENEDICT** said **REP. COCCHIARELLA** would need to retrieve that testimony.

REP. COCCHIARELLA asked if the closed claims study is a reliable and valid study. **REP. BENEDICT** said it was as close as it could be.

REP. COCCHIARELLA asked if he had seen the closed claim study. **SEN. BENEDICT** said yes the committee did go through much work in the select committee in trying to come up with a criteria for objective medical problems. The thing which slowed the committee down was trying to determine which one of the guides to use and how should they go about objective medical findings. They are difficult. If a doctor states there is nothing to support the finding of pain, there is no higher power they can go to in saying what is causing the pain.

REP. COCCHIARELLA said perhaps the State Fund would have picked up the case of Mr. Wilkens but there was no diagnostic measure, no way for the physician to determine where the pain was coming from, he would have then been able to collect Workers' Compensation benefits. **SEN. BENEDICT** said that neither **REP. COCCHIARELLA** nor **SEN. BENEDICT** are medical doctors and he does not believe that she can say this bill will take away that person's right to have an objective medical treatment from a doctor. That is conjecture. He still feels remorse for her constituent. Everyone in the room has a constituent like that. They will try as hard as the system will allow to take care of every problem in the world, but there needs to be a point where they need to rely on an objective medical finding from a doctor.

REP. TUSS questioned the tone of the inspections. **Mr. Swanson** said he had not been on any individual inspections. The directions of the safety efforts is to be working as a partner with the customers. There is little accomplished through inspection. The quality of effort needs to analyzed. Customers need to be educated in those areas and working as partners with them to realize the safety savings that can be realized.

REP. TUSS asked what percentage of the work places are covered by that number. **Mr. Swanson** said there are approximately 25,000 customers.

REP. TUSS asked if there were a duplication of effort between what is happening at the State Fund level and the Department of

Labor and Industry. **Mr. Hunter** said the only duplication which exists is the educational effort.

REP. EWER asked if premiums will be reduced by 8% or 10%. **Mr. Hill** said that is the intention.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 384

Opening Statement by Sponsor:

SEN. BENEDICT said this bill was important to the employers of Montana as it is designed to refine the ground rules for a competitive marketplace for Plan II insurers which offers workers' compensation coverage in Montana. This bill is a must for the monitoring of the marketplace to make sure rates being charged are not excessive nor unfairly discriminatory. It is a technical revision bill.

Proponents' Testimony:

Jacqueline Lenmark, American Insurance Association, provided written testimony. **EXHIBIT 11**

Nancy Butler, State Fund, said in the bill, the Insurance Commissioners have designated one advisory organization. Plan II insurers must belong to that designated advisory organization. The State Fund is now required to be a member of the NCCI. She then explained the changes in the bill.

Stan Kaleczyc, NCCI, said this bill would provide better information that will benefit the consumers of Workers' compensation insurance and the industry.

Frank Coty, Deputy Insurance Commissioner, said the State Auditor's Office supported the bill. This bill would create a more competitive marketplace in Montana for Workers' Compensation insurance. The insurance department regulates Plan II or private workers' compensation carriers in Montana. They do not regulate the State Fund or self-insurers. This bill would allow private carriers to file and use rates and not have to stay with the rates prescribed by rating organizations. This measure allows for more competition in rates as long as those rates are not excessive, inadequate or unfairly discriminatory. It has been the view of the Commission they should foster competition in the marketplace and provide consumers with more choices.

Opponents' Testimony:

None.

EXHIBIT 1
DATE 3-6-95
HB SB375

HOLLY SUGAR CORPORATION
P.O. BOX 1168
SIDNEY, MT 59270

DATE: MARCH 3, 1995
TIME:

FACSIMILE COVER LETTER

PLEASE DIVERT THE FOLLOWING PAGES TO:

NAME: HOUSE BUSINESS AND LABOR COMMITTEE
COMPANY:

FROM: RICHARD S. PARRILL--HOLLY SUGAR CORPORATION
SIDNEY, MONTANA

A TOTAL OF ONE PAGES (INCLUDING THIS COVER SHEET) ARE BEING TRANSMITTED. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (406) 482-3303. FOR FUTURE REFERENCE, OUR TELECOPY PHONE NUMBER IS (406) 482-5892.

MESSAGE:

HOLLY SUGAR SUPPORTS YOUR ACTION TO APPROVE SB375. WORKMEN'S COMPENSATION COSTS NEED TO BE REDUCED AND THIS BILL ADDRESSES ONE OF THOSE COSTS THAT CAN BE ELIMINATED.

THANK YOU FOR YOUR EFFORTS.

RICHARD S. PARRILL

HOLLY SUGAR CORPORATION
A SUBSIDIARY OF IMPERIAL HOLLY CORPORATION

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

** TOTAL PAGE.001 **

INTERMOUNTAIN
Lumber Truss

EXHIBIT 2
DATE 3-6-95
~~HB~~ SB 375

Truss Division
406/449-5553

SB 375
REVISE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS

Recommend
Do Pass

Mr. Chairman members of the committee:

I am Harlee Thompson manager of Intermountain Truss located here in Helena. I am also Treasurer of the Coalition for Work Comp System Improvement (CWCSI). I serve on the State and local board of directors for the Montana Building Industry Association (MBIA).

Because I am an employee and have a small interest in a corporation I am on both sides of the fence when it comes to workers compensation. I am both an employer and an employee.

Montana has among the highest Workers Comp rates in the nation. Montana has among the highest Workers Comp benefit structures in the nation. Montana has among the lowest wages in the nation.

When I see the effect the premiums paid for workers comp has on the ability to pay a decent wage I get very discouraged. When I see a young family trying to make a living on the wages that are afforded by some of the smaller companies I get discouraged.

SB 375 will cut some benefits. SB 375 will cut premiums.

We need to remember that the majority of workers that these high premiums go to protect are not the minority that receive these high benefits. The majority of our work force does not get injured on the job.
As a result of more safety awareness in the work place the number of injuries will go down.

If reducing benefits will reduce premiums and make a higher salary available to the majority of workers and it will create a better business climate that will encourage new business and expansion of current businesses then that is what needs to be done. SB 375 will do this!

The CWCSI and the MBIA and I encourage you to pass SB 375.

Thank You.

790 Nicole • P.O. Box 5898 • Helena, Montana 59604 • FAX 406/449-5554

EXHIBIT 3
DATE 3-6-95
HB SB 375

TESTIMONY
HOUSE BUSINESS & LABOR COMMITTEE
MARCH 6,1995
SB 375

Mr. Chairman and members of the committee for the record I am Charles Brooks from Billing, representing the Billings Area Chamber of Commerce. The Chamber has over the years had a deep concern for the need of major reform in our workers comp system. We applaud the progress made todate by the current management. SB 375 in our judgement continues to address some of our concerns. The Chamber before the session began, drafted a position paper stating some concerns that need to be address.

1. Establish and clearlly define the benefits of permanent partial disability.

2. As one of the high benefit states, we certainly need to have adjustments to and restructure benefits.

3. We feel that SB 375 addresses these concerns. WE ask your favorable consideration of SB 375 with a do pass.

Thank you for this opportunity to appear before you.

Montana Academy of Physician Assistants

EXHIBIT 4
DATE 3-6-95
HB SB 375

A Constituent Chapter of the American Academy of Physician Assistants

TESTIMONY REGARDING SB 375

March 6, 1995

My name is Jennifer Krueger - I'm the current president of the Montana Academy of Physician Assistants (MAPA). I'm here to speak in opposition of SB 375 due to the restrictions placed on physician assistants. The current wording restricts physician assistants from treating worker's compensation patients unless a physician is unavailable. MAPA is very concerned about this restriction for the following reasons:

- PA's are fully licensed and legally permitted to treat worker's compensation patients. The American Academy of Physician Assistants (AAPA), includes the American Academy of Occupational Health PAs. This is a nationally recognized group of PAs who specialize in, among other areas, worker's compensation patients.

- There is no medical or legal basis for this exclusion. In fact, several Occupational Health Departments at Montana health care institutions recruit and employ PAs to treat worker's compensation patients.

- The exclusion of PAs will create a hardship for clinics and hospitals. To restrict PA's from treating worker's comp patients will add a financial burden to the institution, as well as a time burden to the individual physician.

- The exclusion of PAs will create a hardship for patients. Timely access to care is critical for these individuals. To restrict PAs from treating them will adversely affect the ability of the patient to obtain quality care quickly.

- The current wording is in direct conflict with national and state trends regarding medical care. Physician assistants have proven to be an invaluable asset, providing a cost-effective answer to health care shortage problems. In addition, PAs enable institutions to staff more efficiently and more cost-effectively.

Along with other members of Montana's medical community, the directors of the Occupational Health Departments at both St. Patrick's Hospital in Missoula and Billings Clinic have expressed their strong support of MAPA's viewpoint. I urge you to change the wording of SB 375 and allow physician assistants to continue providing quality care to Montana residents and a cost-effective solution for Montana. Thank you for your time.

EXHIBIT 5
DATE 3-6-95
HB SB375

Directors:
Wade Dahood
Director Emeritus
[illegible]te D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Montana Trial Lawyers Association

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
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Tel: (406) 443-3124
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Officers:
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Secretary-Treasurer
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Governor
Paul M. Warren
Governor

March 6, 1995

Rep. Bruce Simon, Chair
House Business Committee
Room 104, State Capitol
Helena, MT 59620

RE: SB 375

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's strongest opposition to SB 375, which would dramatically reduce workers compensation benefits for injured Montanans.

Perversely, SB 375 allows the powerful State Fund to publicly declare its love for Montana's most vulnerable workers while privately abusing and humiliating them with no fear of accountability. For example:

- The bill forces injured workers to surrender important disability benefits unless they can demonstrate wage loss--yet even when they suffer severe disabilities and lose their time-of-injury job, ***no minimum-wage employee can demonstrate wage loss if they are capable of returning to any hypothetical job at all.***
- The bill exploits seasonal workers by allowing insurance companies to manipulate periods of forced idleness when calculating average weekly wages.
- The bill brutalizes Montana's oldest workers by robbing them of their workers compensation benefits whenever they need hard-earned pension benefits to survive.

In a workers compensation system more attentive to the State Fund than to legal rot, SB 375 will produce injustices so blatant, so intolerable, that they will also prove unconstitutional. When the first minimum-wage worker suffers a disabling injury and forced unemployment due to the gross negligence of her employer, yet qualifies for no workers compensation benefits other than her paltry impairment award, SB 375 will cost that employer its exclusive-remedy protection.

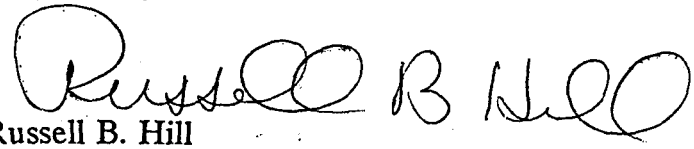
Moreover, SB 375 will encourage Montana citizens, before Montana courts, to correct one of the biggest, most wasteful, and most unpopular government failures in this state: compulsory workers compensation dominated by the State Fund. Regardless of other factors, a petition to amend Montana's constitution regarding workers compensation could:

- Benefit from years of negative publicity and continuing voter anger;
- Save Montana employers ***$250 million each year*** in mandatory workers compensation premiums, or ***$625 per employee per year***;
- Compared to SB 375, increase employer incentives nearly ***1,000 percent each year*** to create new jobs and raise wages;
- Appeal to the vast majority of Montana employees, who never qualify for a penny of workers compensation benefits and resent paying for those who do;
- Protect Montana consumers who already pay for better insurance than workers compensation policies provide--and who could otherwise collect much more generous benefits under their own policies for work-related injuries;
- Permit Montana employers and employees, together or individually, to insure against workplace injuries with more favorable and efficient types of insurance, including no-fault health, life, disability, and income-security coverage;
- Preserve workers compensation insurance for those employers and employees who freely choose it;
- Relieve the state--and the State Fund as insurer of last resort--from the costly burden of guaranteeing insurance for employers currently required by law to maintain workers compensation coverage;
- Reduce workplace injuries by making more employers fully accountable for their carelessness;
- Focus intense public attention on the chief winners and losers under Montana's current workers compensation system; and
- Force the defenders of compulsory workers compensation to mount a massive public-relations campaign against such a constitutional amendment.

In short, MTLA believes that SB 375 will convince many Montanans already fed up with their state's workers compensation system that they have little to lose and much to gain from such a petition--regardless of the final vote on a constitutional amendment.

Thank you again for this opportunity to express MTLA's opposition to SB 375. If I can provide additional information or assistance to the Committee, please allow me to do so.

Respectfully,



Russell B. Hill
Executive Director

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO. _____ ON THE ELECTION BALLOT

If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the _____, 19__, general election ballot:

AMENDING ARTICLE II, SECTION 16 OF THE MONTANA CONSTITUTION TO ALLOW EMPLOYERS AND EMPLOYEES TO REJECT WORKERS COMPENSATION COVERAGE

Article II, Section 16, of the Montana Constitution is amended to read:

"**Section 16. The administration of justice.** Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. No person shall be compelled to provide or accept coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay."

Voters are urged to read the complete text of the measure, which appears above on this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

Complete Signature	Printed Last Name	Post Office Address	Legis. District
1.			
2.			
3.			

EXHIBIT 6
DATE 3-6-95
HB SB 375

SENATE BILL NO. 375
3/6/94

MR. CHAIRMAN AND COMMITTEE MEMBERS:

MY NAME IS RANDY SPEAR. I AM A PHYSICIAN ASSISTANT (PA). SINCE GRADUATION FROM PA TRAINING IN 1979, I HAVE PROVIDED HEALTH CARE IN RURAL COMMUNITIES, FIRST IN IOWA AND IN MONTANA FROM 1987-1993. CURRENTLY I PROVIDE MEDICAL CARE AT THE BILLINGS CLINIC.

IN ADDITION TO MY ORAL TESTIMONY, I WISH TO SUBMIT TWO LETTERS OF CONCERN IN REGARD TO THIS BILL'S TREATMENT OF PHYSICIAN ASSISTANTS (PAs). THESE LETTERS, AS WELL AS MY TESTIMONY, SUPPORT THIS BILL AND ITS ONGOING ATTEMPT TO COST-EFFECTIVELY PROVIDE FOR HEALTH CARE NEEDS OF INJURED WORKERS. HOWEVER, WE BELIEVE AN ADDITION AMENDMENT IS NEEDED.

SECTION 39-71-116(31)(C) CURRENTLY READS: "A PHYSICIAN ASSISTANT-CERTIFIED LICENSED BY THE STATE OF MONTANA UNDER TITLE 37, CHAPTER 20, IF THERE IS NOT A PHYSICIAN, AS DEFINED IN SUBSECTION (31)(A), IN THE AREA WHERE THE PHYSICIAN ASSISTANT-CERTIFIED IS LOCATED.

I WOULD ASK THE COMMITTEE TO STRIKE ALL WORDING AFTER "TITLE 37, CHAPTER 20".

RATIONALE FOR THIS REQUEST INCLUDE:

1. The definition of "area" is nowhere defined. It is ambiguous and imprecise. Is "area" to mean a room, hallway. building, city, county, state? Dictionaries offer no geographic solution.

2. If PAs in rural, isolated areas are qualified to be considered a "treating physician", then by what reasoning are those (PAs) located in "areas" in which physicians are present being judged as unqualified to be considered a "treating physician".

3. This bill would create a dual standard among PAs with no medical or legal reasoning. The possibility of legal action on the basis of restraint of trade or class action suite seems to me to be enhanced by sustaining this language. An unnecessary risk without good rationale, I would think.

4. Some of the most experienced PAs in this state in terms of occupational medicine and Workers' Comp are currently working at the Billings Clinic with daily interaction with supervising physicians. The current language is limiting the utilization of these individuals, while allowing others with less experience and minimal

onsite supervision to function as a "treating physician". Does this seem logical?

5. Other third party carriers are looking to the language of this law to justify or question their need to cover health care services provided by PAs. Surely this must have been an unintended result of the current language?

6. National trends all provide for greater utilization of PAs. Why would restricting this groups ability to provide high quality, cost-effective health care be in the best interest of Montanans?

7. MCA 33-22-111 (copy enclosed) provides for freedom of choice of practitioners. This law specifically includes Workers' Compensation Act as an entity that must allow the insured to seek care from a PA if desired.

8. MCA 33-22-114 (copy enclosed) was specifically written to disallow any health insurance carriers selling policies within Montana to avoid paying for medical services provided by a PA if that carrier would provide payment to a physician for the same service. Is the State Fund exempt from this same law? If so, by what justification?

IN CLOSING, IT IS BEYOND ME HOW THE CURRENT POLITICAL FORCES CAN TOLERATE MORE INTRUSIVE GOVERNMENT. THERE IS NO PROMISE OF COST SAVINGS IN THIS BILL'S CURRENT LANGUAGE IN REGARD TO THIS MATTER. I WOULD CONTEND QUITE THE OPPOSITE IS TRUE.

THANK YOU MR. CHAIRMAN FOR AN OPPORTUNITY TO SPEAK ON THIS ISSUE.

EXHIBIT 7
DATE 3-6-95
~~HB~~ SB 375

March 6, 1995

Steven J. Shapiro
Montana Nurses Association

Testimony on Senate Bill 375
regarding the Workers Compensation Act

I am Steven Shapiro representing the Montana Nurses Association. MNA is composed of 1,400 registered professional nurses working in all phases of health care across the State of Montana.

Senate Bill 347 was passed in the 53rd Legislature amending various health care provisions in the Workers' Compensation Act. Section 39-71-116, MCA, was amended with a definition of "treating physician" to include a medical doctor, chiropractor, physician assistant, osteopath or dentist. Since the bill was enacted, it has been noted that advanced practice registered nurses were apparently inadvertently omitted from this definition.

Advanced practice registered nurses provide primary health care in a variety of settings in Montana and the United States. Many of them are authorized by the State Board of Nursing as independent health care practitioners, some including the authority to prescribe medications. However, they have been denied reimbursement by workers' compensation insurers because of the oversight in Senate Bill 347 (1993).

We ask the committee to adopt the attached amendment to Senate Bill 375 which would add in advanced practice registered nurses in the definition of "treating physician" in Section 39-71-116, MCA.

March 6, 1995

Steven J. Shapiro
Montana Nurses Association

Amendment offerred to Senate Bill 375

Section 5. [amending 39-71-116, MCA]

Subsection (31)

Subsection (d); following "Title 37, chapter 5;" *strike* "or"

Subsection (e), following "Title 37, chapter 4."

insert " ; or

"(f) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8."

-END-

EXHIBIT 8
DATE 3-6-95
HB SB375

OHS Occupational Health Service

A Division Of Claims Management Services

February 27, 1995

Mr. Steven Shapiro, Attorney-at-Law
Box 169
Clancy, Montana 59634

Dear Mr. Shapiro:

Thank you for taking such an active interest in Advanced Practice Nurses in the State of Montana. I am writing to you in regard to our telephone conversation of February 27, 1995 during which you asked me if I could give you examples of the Worker's Compensation injuries that I see. Before I list specific examples, I thought I would give you a little background information.

I am an Advanced Practice Nurse who is masters prepared, certified nationally as a Nurse Practitioner, been in practice for twelve years, eight of those dealing primarily with Worker's Compensation patients in an occupational health setting. Currently, I am employed by Applied Health Services, which is the for-profit arm of Northwest Healthcare (including Kalispell Regional Hospital) and work in the Occupational Health Service located in the hospital. I see corporation employees for both work related and non-work related health problems at no charge to the individual employee and independent of a physician.

Examples of work related injuries that I see are back injuries; lacerations; fractures; shoulder, ankle, and wrist strains; cumulative trauma, such as carpal tunnel syndrome, sick-building syndrome, exposure to HIV/AIDS, falls, etc. As a Nurse Practitioner, I take a health history from the patient to find out how and when the injury occurred, perform a physical examination, and determine if additional studies are needed to make a diagnosis, such as blood work to rule out arthritis or x-rays to rule out a fracture. Based on the results, I determine a treatment plan. This would include, but is not limited to, health education and counseling, writing prescriptions for medications, prescriptions for physical, occupational, or chiropractic therapy, and referrals to specialists (usually orthopedists if there is a fracture or surgery is indicated). This is all within the scope of practice of a Nurse Practitioner and done without consulting a physician.

In addition, I determine if the employees can return to work and if so, in what capacity. Perhaps modifications in the employee's job, such as a lifting restriction, needs to be made to keep the

310 Sunnyview Lane - Kalispell, MT 59901

received 3-3-95

employee safely at work and to allow them to recover from their injury. This prevents the employee from missing time from work and collecting Worker's Compensation benefits. It also shows the employee, by keeping him at work even though he is not at 100%, that he is still valuable to the corporation and not easily replaced. I follow the employee on a weekly basis in my office, sometimes more frequently, adjusting medications, treatment plans, and work restrictions depending on the employee's progress and independent of a physician. I communicate often with their supervisor and other health care providers, such as therapists, to facilitate the employee's return to pre-injury status.

In summary, Nurse Practitioners currently are providing cost effective care for the Worker's Compensation population that requires intensive management, not only of medical issues but socioeconomic and psychological concerns that affect their injuries and can prolong their entry back into the work force. Nurse Practitioners work well in interacting with other medical providers to coordinate optimum care and services for injured workers. To not include Nurse Practitioners as providers, yet to include Chiropractors and Physician's Assistants, most of whom have less training than Nurse Practitioners, does a great injustice to the public and to the taxpayer.

If I can be of any further assistance in helping you to understand the role of the Advanced Practice Nurse and specifically how this role relates to Worker's Compensation, please do not hesitate to contact me.

Sincerely,

Ann K. Ingram

Ann K. Ingram, R.N., M.S.N., C.A.N.P.
Occupational Health Service
Applied Health Services
Telephone: (406) 752-5111, Ext. 2036
Fax: (406) 756-4717

AKI/je

EXHIBIT 9
DATE 3-6-95
~~HB~~ SB 375

Comments before the Senate Labor Subcommittee
SB 375
2/26/95

Mr. Chairman and Committee Members:

My name is Bill Shaw. I am a physician at the Billings Clinic. As a specialist in Occupational Medicine I have spent the past decade at the Clinic caring almost exclusively for patients covered by worker's compensation. I couldn't help but notice as Sen. Benedict listed participants in formulation of this Bill that medical providers were not mentioned.

I have some specific concerns with certain portions of the bill and would like to offer some suggestions.

On page 8, lines 1-2, Physician Assistants are authorized as treating physician only when an MD is not available. The effect on my office is that 2 PA-Cs with over 30 years combined experience and special expertise in Occupational Medicine and Worker's Comp cannot act as treating physicians while a less experienced and minimally supervised provider in a remote site of Montana can. This creates 2 classes of providers which seems difficult to justify and is certainly unfair. It further flies in the face of national trends which encourages the utilization of midlevel providers as a cost effective way of providing care.

I recommend that Section 39-71-116 (31)(c) be amended to read: "a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20," deleting the clause on page 8, lines 1-2.

On page 7, Lines 2-4 regarding Secondary Services, this is defined as treatment directed at disability - not impairment. Unfortunately, impairment is not defined. Using standard definitions , if strictly followed an amputee receiving a prosthesis would fall under secondary care since it is directed toward disability and not impairment and would therefore be provided on a discretionary basis.

I would recommend that the definition for impairment that is set forth in the AMA Guide to the Evaluation of Permanent Impairment be included in this bill.

On page 11, Line 9-11, liability is not present for medical care after MMI has been reached and the condition recurs in a non occupational setting. This will mean that the patient is not covered since 3rd party coverage will exclude it as a preexisting condition. For example, if a patient with a work related herniated

disc who undergoes surgery and reaches MMI, a recurrent disc which occurs a year later at home will not be covered. Clearly, that person is out of luck.

On page 16, lines 1-8, there are definitions of functional capacity. These definitions which address lifting capacity only are for too narrow. While they may be applicable to back injuries, it has little relevance to injuries to other body systems.

I would recommend expanding these definition to a broader one such as the Department of Labor - Dictionary of Occupational Titles. I would be glad to provide details and documentation for this.

On page 16, line 30, Impairment is established by objective medical findings. This definition supersedes the direction set forth in the AMA Guide which is required for use and is therefore redundant.

I would recommend that paragraph (b) of this section be used alone which will suffice for physicians in this arena.

Finally, I would make a comment on one of the thrusts of this bill having to do with Objective Medical Findings. This is found in the definition on page 5, lines 1-2. While I understand and applaud the intent of these provisions, as a physician, I can attest that I regularly see patients with real problems in whom I have great difficulty confirming "objective findings" as defined here. I'm afraid that this definition will force me and my colleagues to play a word game in order to provide care for our patients.

Thank You.

William S. Shaw, M.D.
Director, Occupational Medical Services
Billings Clinic
Billings, MT
406-238-2710

EXHIBIT 10
DATE 3-6-95
~~HB~~ SB 375

BILLINGS CLINIC

S.B. 375 3/3/95

MR. CHAIRMAN AND COMMITTEE MEMBERS

I RESPECTFULLY REQUEST THE SUBMISSION OF THIS LETTER INTO YOUR HEARINGS ON REVISING THE WORKER COMPENSATION LAWS OF THE STATE OF MONTANA

ON PAGES 7 AND 8 OF THE 3RD READING OF THIS BILL, LINE 30 PAGE 7 & LINES 1 & 2 PAGE 8. I REQUEST YOU DELETE THE following "IF THERE IS NOT A PHYSICIAN, AS DEFINED IN SUBSECTION (3)(a), IN THE AREA WHERE THE PHYSICIAN ASSISTANT - CERTIFIED IS LOCATED. By including this SENTENCE IN THE BILL I BELIEVE IT HAS THE POTENTIAL TO NEGATIVELY AFFECT MY LEGAL CAPABILITIES TO OFFER CARE TO MANY OF THE PATIENTS I SEE IN THE DEPARTMENT OF OCCUPATIONAL MEDICINE AT Billings Clinic WHERE I'VE BEEN EMPLOYED FOR THE PAST TEN YEARS. I AM A COST CONSCIOUS, ETHICAL, HEALTH CARE PROFESSIONAL who SINCERELY WORKS ON BEHALF OF THE PATIENTS I SEE, BUT I ALSO KEEP IN MIND THE SIGNIFICANT IMPACT MY DECISIONS CAN HAVE ON EMPLOYERS AND INSURANCE PROVIDERS AS WELL. MOST OF THE PATIENTS I SEE RECOVER FULLY IN A VERY SHORT PERIOD OF TIME AND RETURN TO FULL, UNRESTRICTED WORK WITH NO NEED FOR IMPAIRMENT RATINGS OR PERMANENT PARTIAL DISABILITIES. PLEASE ALLOW ME TO CONTINUE OFFERING THIS CARE TO PATIENTS AT Billings CLINIC.

Billings Clinic Downtown, 2825 8th Avenue North, P.O. Box 35100, Billings, MT 59107-5100 (406) 238-2710

Montana Toll Free: 1-800-332-7156 Toll Free: 1-800-458-6634

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THANK YOU,
MOST RESPECTFULLY,

David L. Johnson PAC

David Johnson, PA/C - William S. Shaw, M.D.
Occupational Medicine / Work Care
The Billings Clinic
P. O. Box 35100
Billings, Montana 59107-5100
406-238-2710

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE

BILL NO. SB 345 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRIN

NAME AND ADDRESS	REPRESENTING	Support	Oppos
A.F.S.C.M.E 59604 P.O. Box 5356 Helena MT	AFSCME		✓
Steven Shapiro	MT. Nurses Assn.		
TERRY MITTON	COALITION FOR WORK COMP SYSTEM IMPROVEMENT	✓	
HARLee Thompson Helena	CWCSI & MBIA	—	
W. James Kembel	Liberty Northwest Ins.	✓	
Don Allen	CWCSI MT Wood Products Assn	✓ ✓	
Charles R. Brooks	Billings Chamber	✓	
Jacqueline Lenmark	Am. Ins. Assn	✓	
Robert McWhit	Bozeman Chamber	—	
Jennifer Krueger 1101 S. Montana Butte, MT 59701 3746 E. Riggs St.	MONTANA ACADEMY OF PHYSICIAN ASSTS	✓	✓
John VanSweringen East Helena, MT	Montana Federation of State Employees & Teachers		✓
Randy Spear	Self - PAs in Montana	✓	✓
George Wood	MT. Self Employed Assn	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

CHUCK HUNTER	DEPT OF LABOR	✓	
JOE ROBERTS	REHAB. ASSN OF MT.	✓	
Laurie Ekanger	Governors Office	✓	
Don Judge	MT STATE AFL-CIO		✓

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

DATE

BILL NO. SB 375 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRIN

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bob Worthington	MMIA	—	
Jerry Driscoll	Mt State Building trades		✓
Riley Johnson	NFIB	✓	
Curt Laingen	MT Motor Carriers Assn	✓	
Norm Grosfield	Self		✓
Steve Turkiewicz	Mt. Auto Dealers Assn	✓	
Russell B Hill	Mt Trial Lawyers		✓
Melissa Case	Hotel employees & Rest. Emplay Union		✓
David Owen	Mt Chamber	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FOR
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 7, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 151, SB 80, SB 392, SB 400,
Executive Action: HB 574, SB 400, SB 80, SB 375, SB 384, SB 22, SB 242, SB 19, SB 201, SB 38

EXECUTIVE ACTION ON SB 375

Motion: REP. ROSE FORBES MOVED SB 375 BE CONCURRED IN.

Discussion:

CHAIRMAN SIMON said he had discussed the issue with Workers' Compensation. The nurses have come in requesting an amendment to the bill which has been been discussed with the people from Workers' Compensation. Although this poses a problem, there is a way to add advanced practiced registered nurses into the bill in those areas where a physician is not readily available. They are the primary providers in rural areas.

Motion: REP. MILLS MOVED THE MILLS AMENDMENTS.

Discussion:

REP. COCCHIARELLA opposed the amendments. Physical therapists should also be listed as treating physicians.

CHAIRMAN SIMON said physical therapists are not in independent practice and they need to be referred by a treating physician.

REP. ELLIS asked if this amendment had been referred to **SEN. BENEDICT.**

CHAIRMAN SIMON said he had discussed the amendment with him.

REP. COCCHIARELLA said because of the reasons stated she was even more worried about putting nurses on as treating physicians because they are not being supervised in doing these things on their own. That would be a worry.

REP. MILLS said the nurses were already licensed to practice and all that is being done with this bill is putting them as the practitioner under Workers' Compensation. The scope of their practice is not being widened.

REP. EWER said he agreed with the testimony of **REP. COCCHIARELLA.**

Vote: A roll call vote was taken to adopt the Mills amendment which failed 9-9 with REPS. PAVLOVICH, COCCHIARELLA, ELLINGSON, ELLIS, EWER, FORBES, LARSON, MCKEE and OHS voting no

Motion: REP. EWER MOVED THE EWER AMENDMENT.

Discussion:

REP. EWER explained the amendments.

REP. ELLIS said he resisted the amendment. The comparison which is made may have some validity, but society is allowed too much

ability to sue in the courts which has hurt Workers' Compensation.

REP. COCCHIARELLA said because there is a Workers' Compensation system, there is no right to sue. Workers' Compensation provides exclusive remedy.

REP. ELLINGSON said this is not an accurate measure of the earning capacity of the injured individual. If it is to remain in there it cannot be a consideration of the loss of earning capacity.

Vote: A roll call vote was taken and motion failed to adopt the Ewer amendments 8-10 with REPS. SIMON, BARNETT, DEVANEY, ELLIS, FORBES, HERRON, KEENAN, MARSHALL, OHS and SLITER voting no.

Motion/Vote: REP. COCCHIARELLA MOVED THE #1 COCCHIARELLA AMENDMENT. A roll call vote was taken and motion failed to adopt the #1 Cocchiarella amendment 7-11 with REPS. SIMON, MILLS, BARNETT, DEVANEY, ELLIS, FORBES, KEENAN, MARSHALL, MCKEE, OHS and SLITER voting no.

Motion/Vote: REP. COCCHIARELLA MOVED THE #2 COCCHIARELLA AMENDMENT. A roll call vote was taken and the motion failed to adopt the #2 Cocchiarella amendment 5-13 with REPS. SIMON, MILLS, BARNETT, DEVANEY, EWER, FORBES, HERRON, KEENAN, MARSHALL, MCKEE, OHS, SLITER and TUSS voting no.

Motion/Vote: REP. FORBES MOVED SB 375 BE CONCURRED IN AS AMENDED. A roll call vote was taken which passed 12-6 with REPS. PAVLOVICH, COCCHIARELLA, ELLINGSON, EWER, LARSON and TUSS voting no.

EXECUTIVE ACTION ON SB 384

Motion/Vote: REP. SLITER MOVED SB 384 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 22

Motion/Vote: REP. HERRON MOVED SB 22 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON SB 242

Motion: REP. ELLIS MOVED SB 242 BE CONCURRED IN. REP. MCKEE MOVED THE AMENDMENTS.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 3-7-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE STANDING COMMITTEE REPORT

March 7, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 375** (third reading copy -- blue) **be concurred in**.

Signed: _____
Bruce Simon, Chair

Carried by: Rep. Hibbard

Committee Vote:
Yes 12, No 5.

531304SC.Hbk

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-7-95 BILL NO. SB 315 NUMBER _____

MOTION: Be amend as amend

NAME	AYE	NO
Rep. Bruce Simon, Chairman	✓	
Rep. Norm Mills, Vice Chair, Maj.	✓	
Rep. Bob Pavlovich, Vice Chair, Min.		✓
Rep. Joe Barnett	✓	
Rep. Vicki Cocchiarella		✓
Rep. Charles Devaney	✓	
Rep. Jon Ellingson		✓
Rep. Alvin Ellis, Jr.	✓	
Rep. David Ewer		✓
Rep. Rose Forbes	✓	
Rep. Jack Herron	✓	
Rep. Bob Keenan	✓	
Rep. Don Larson		✓
Rep. Rod Marshall	✓	
Rep. Jeanette McKee	✓	
Rep. Karl Ohs	✓	
Rep. Paul Sliter	✓	
Rep. Carley Tuss		✓

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-7-95 BILL NO. SB 315 NUMBER _____

MOTION: Cocchiarella #2 amend

Motion fails

NAME	AYE	NO
Rep. Bruce Simon, Chairman		✓
Rep. Norm Mills, Vice Chair, Maj.		✓
Rep. Bob Pavlovich, Vice Chair, Min.	✓	
Rep. Joe Barnett		✓
Rep. Vicki Cocchiarella	✓	
Rep. Charles Devaney		✓
Rep. Jon Ellingson	✓	
Rep. Alvin Ellis, Jr.	✓	
Rep. David Ewer		✓
Rep. Rose Forbes		✓
Rep. Jack Herron		✓
Rep. Bob Keenan		✓
Rep. Don Larson	✓	
Rep. Rod Marshall		✓
Rep. Jeanette McKee		✓
Rep. Karl Ohs		✓
Rep. Paul Sliter		✓
Rep. Carley Tuss		✓

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-7-95 BILL NO. SB375 NUMBER _____

MOTION: Cocchiarella amendments

Motion fails

NAME	AYE	NO
Rep. Bruce Simon, Chairman		✓
Rep. Norm Mills, Vice Chair, Maj.		✓
Rep. Bob Pavlovich, Vice Chair, Min.	✓	
Rep. Joe Barnett		✓
Rep. Vicki Cocchiarella	✓	
Rep. Charles Devaney		✓
Rep. Jon Ellingson	✓	
Rep. Alvin Ellis, Jr.		✓
Rep. David Ewer	✓	
Rep. Rose Forbes		✓
Rep. Jack Herron	✓	
Rep. Bob Keenan		✓
Rep. Don Larson	✓	
Rep. Rod Marshall		✓
Rep. Jeanette McKee		✓
Rep. Karl Ohs		✓
Rep. Paul Sliter		✓
Rep. Carley Tuss	✓	

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-7-95 BILL NO. SB325 NUMBER _____

MOTION: Ewer amendment

Motion fails

NAME	AYE	NO
Rep. Bruce Simon, Chairman		✓
Rep. Norm Mills, Vice Chair, Maj.	✓	
Rep. Bob Pavlovich, Vice Chair, Min.	✓	
Rep. Joe Barnett		✓
Rep. Vicki Cocchiarella	✓	
Rep. Charles Devaney		✓
Rep. Jon Ellingson	✓	
Rep. Alvin Ellis, Jr.		✓
Rep. David Ewer	✓	
Rep. Rose Forbes		✓
Rep. Jack Herron		✓
Rep. Bob Keenan		✓
Rep. Don Larson	✓	
Rep. Rod Marshall		✓
Rep. Jeanette McKee	✓	
Rep. Karl Ohs		✓
Rep. Paul Sliter		✓
Rep. Carley Tuss	✓	

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-7-95 BILL NO. SB375 NUMBER _____

MOTION: ~~Simon~~ Mills amendment

Motion fails

NAME	AYE	NO
Rep. Bruce Simon, Chairman	✓	
Rep. Norm Mills, Vice Chair, Maj.	✓	
Rep. Bob Pavlovich, Vice Chair, Min.		✓
Rep. Joe Barnett	✓	
Rep. Vicki Cocchiarella		✓
Rep. Charles Devaney	✓	
Rep. Jon Ellingson		✓
Rep. Alvin Ellis, Jr.		✓
Rep. David Ewer		✓
Rep. Rose Forbes		✓
Rep. Jack Herron	✓	
Rep. Bob Keenan	✓	
Rep. Don Larson		✓
Rep. Rod Marshall	✓	
Rep. Jeanette McKee		✓
Rep. Karl Ohs		✓
Rep. Paul Sliter	✓	
Rep. Carley Tuss	✓	

SENATE BILL NO. 375

INTRODUCED BY BENEDICT, HIBBARD, HARP, BROWN, CLARK, MARSHALL, KASTEN, FISHER, BAER, MILLS, BOHLINGER, ROSE, BURNETT, WELLS, DENNY, SIMPKINS, HARGROVE, L. SMITH, MILLER, MERCER, KEENAN, GRINDE, STORY, AKLESTAD, DEVANEY, AHNER, COBB, KEATING, BRAINARD, REHBEIN, FUCHS, DEBRUYCKER, ANDERSON, GRIMES, MCGEE, KITZENBERG, SOFT, FORBES, TAYLOR, BERGMAN, MCKEE, TREXLER, HERTEL, M. HANSON, BARNETT, VICK, ARNOTT, GREEN, SOMERVILLE, HAYNE, MASOLO, HERRON, FORRESTER, EMERSON, JABS, JENKINS, MESAROS, COLE, GAGE, SLITER, CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; AUTHORIZING PAYMENT OF MEDICAL CLAIMS WITHOUT ACCEPTANCE OF LIABILITY; REQUIRING INSURERS TO ACT PROMPTLY ON CLAIMS; DEFINING "OBJECTIVE MEDICAL FINDINGS" AND REQUIRING INJURY AND DISABILITY TO BE ESTABLISHED BY OBJECTIVE MEDICAL FINDINGS; REVISING THE DEFINITION OF "INJURY"; DEFINING "ACTUAL WAGE LOSS"; REVISING REQUIREMENTS TO RECEIVE PERMANENT PARTIAL DISABILITY BENEFITS; REVISING PROVISIONS REGARDING TERMINATION OF BENEFITS UPON RETIREMENT; REVISING PROVISIONS FOR LUMP-SUM CONVERSIONS; ALLOWING SUSPENSION OF BENEFITS WHILE A CLAIMANT IS INCARCERATED FOR A MISDEMEANOR; REVISING THE DEFINITION OF DISABLED WORKER; EXEMPTING PAYMENT AGREEMENTS BETWEEN A PREFERRED PROVIDER ORGANIZATION AND AN INSURER FROM PRESCRIPTION DRUG PAYMENT LIMITS; REVISING REHABILITATION BENEFITS; AUTHORIZING THE WORKERS' COMPENSATION COURT JUDGE TO STAY PROCEEDINGS IN CERTAIN CIRCUMSTANCES; REVISING THE DEFINITION OF "WAGES"; AUTHORIZING A REDUCTION IN BENEFITS FOR THIRD-PARTY RECOVERIES; AUTHORIZING THE TERMINATION OF TEMPORARY TOTAL BENEFITS UPON NOTIFICATION OF A WORKER'S RELEASE TO RETURN TO WORK; REQUIRING A SOLE PROPRIETOR, PARTNER, CORPORATE OFFICER, OR MANAGER OR MEMBER OF A LIMITED LIABILITY COMPANY OR A DESIGNEE TO PROVIDE NOTICE OF INJURY WITHIN 30 DAYS; AUTHORIZING TERMINATION OF CERTAIN BENEFITS FOR NONCOOPERATION WITH A REHABILITATION PROVIDER; REVISING THE FILING TIME FOR OCCUPATIONAL DISEASE CLAIMS; REVISING PROVISIONS FOR PAYMENT OF MEDICAL EXPENSES IN OCCUPATIONAL DISEASE CLAIMS; EXTENDING TEMPORARY PARTIAL DISABILITY BENEFITS; AMENDING SECTIONS 39-71-116, 39-71-119, 39-71-123, 39-71-407, 39-71-603, 39-71-609, 39-71-701,

39-71-702, 39-71-703, 39-71-710, 39-71-711, 39-71-712, 39-71-721, 39-71-723, 39-71-727, 39-71-741, 39-71-744, 39-71-1011, 39-71-1032, 39-71-2001, 39-72-403, AND 39-72-704, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] authorizes the department of labor and industry to adopt rules to provide for prompt claims handling practices for injured workers, for employers, and for providers who are the customers of the workers' compensation system. It is the intent of the legislature that the department of labor and industry adopt rules providing claimants with written explanations of claims and the methodology of benefit calculation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Stay pending determination by district court.** Upon a motion and filing of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of proceedings in the workers' compensation court if a criminal action involving workers' compensation insurance fraud by a claimant has been filed in district court.

NEW SECTION. **Section 2. Benefit reduction for third-party recovery.** (1) If an employee is injured or dies and obtains a third-party recovery, settlement, or award, an insurer may reduce by 30% the benefits paid or that are required to be paid to the employee or beneficiary pursuant to chapter 71 or 72 as a result of the injury or death. The reduction applies to any recovery, settlement, or award regardless of the form of action or the nature of damages. The total of any reductions may not exceed 30% of any third-party recovery, settlement, or award.

(2) This section does not limit or prohibit an insurer's right to pursue subrogation pursuant to 39-71-414.

(3) If an insurer is entitled to subrogation pursuant to 39-71-414, the amount subrogated must be offset by any reduction in benefits pursuant to subsection (1).

NEW SECTION. **Section 3. Payment of medical claims without acceptance of liability.** (1) An

insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational disease without the payments being construed as an acceptance of liability for the claim.

(2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of the payment of the medical claim without acceptance of liability.

(3) Upon written request by a worker for the payment of indemnity benefits or for a determination of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease under 39-71-606 or 39-71-608.

NEW SECTION. **Section 4. Insurers to act promptly on claims.** (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(3) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(4) An insurer may not make payments pursuant to 39-71-608 or any other reservation of rights for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

(5) The department may adopt rules to implement this section.

Section 5. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases ~~employed~~ used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

~~(1)~~(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) ~~the~~ investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

~~(2)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(3)~~(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under ~~the age of~~ 18 years of age;

(c) an unmarried child under ~~the age of~~ 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over ~~the age of~~ 18 years of age who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(d)~~ (4)(d), does not exist; and

(f) a brother or sister under ~~the age of~~ 18 years of age if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections ~~(3)(a)~~ (4)(a) through ~~(3)(e)~~ (4)(e), does not exist.

~~(4)~~(5) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

~~(5)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(6)~~(7) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(7)~~(8) "Days" means calendar days, unless otherwise specified.

~~(8)~~(9) "Department" means the department of labor and industry.

~~(9) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.~~

(10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(12) "Invalid" means one who is physically or mentally incapacitated.

(13) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(15) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(15)~~(16) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(16)~~(17) "Palliative care" means treatment designed to reduce or ease symptoms without curing

the underlying cause of the symptoms.

~~(17)~~(18) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(18)~~(19) "Permanent partial disability" means a physical condition~~, after~~ in which a worker, ~~has reached~~ after reaching maximum medical ~~healing, in which a worker~~ healing:

(a) ~~has a medically determined physical restriction as a result of an injury as defined in 39-71-119~~ has a permanent impairment established by objective medical findings; ~~and~~

(b) is able to return to work in some capacity but the ~~physical restriction~~ permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

~~(19)~~(20) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(20)~~(21) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(21)~~(22) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(22)~~(23) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(23)~~(24) "Reasonably safe place to work" means that the place of employment has been made as

free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(24)~~(25) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~(26) (a) "Secondary medical services" means those medical services or appliances considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (26), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(26)~~(27) "Temporary partial disability" means a physical condition resulting from an injury as defined in 39-71-119 in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(27)~~(28) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(28)~~(29) "Temporary total disability" means a physical condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(29)~~(30) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(30)~~(31) "Treating physician" means a person who is primarily responsible for the treatment of a

worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection ~~(30)(a)~~ (31)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(31)~~(32) "Year", unless otherwise specified, means calendar year."

Section 6. Section 39-71-119, MCA, is amended to read:

"**39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical ~~harm~~ condition in relation to other factors contributing to the physical ~~harm~~ condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree

of medical certainty, is responsible for more than 50% of the physical condition."

Section 7. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d). Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value;

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement; and

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) ~~For~~ (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if~~:~~

~~(a)~~ the term of employment for the same employer is less than four pay periods, ~~in which case~~ the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work~~; or~~.

(b) ~~for~~ For good cause shown, ~~by the claimant, the use of the four pay periods does not accurately~~

~~reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods~~ if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118 must be based upon a wage of not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 8. Section 39-71-407, MCA, is amended to read:

"**39-71-407. Liability of insurers -- limitations.** (1) ~~Every~~ Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

~~(6)~~(7) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 9. Section 39-71-603, MCA, is amended to read:

"**39-71-603. Notice of injuries other than death to be submitted within thirty days.** ~~No~~ (1) A claim to recover benefits under the Workers' Compensation Act~~,~~ for injuries not resulting in death~~,~~ may not be considered compensable unless, within 30 days after the occurrence of the accident ~~which~~ that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work ~~upon~~ in which the injured employee

was engaged at the time of the injury is equivalent to notice.

(2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the injury."

Section 10. Section 39-71-609, MCA, is amended to read:

"**39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer -- fourteen days' notice required -- exception.** ~~If~~ (1) Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity."

Section 11. Section 39-71-701, MCA, is amended to read:

"**39-71-701. Compensation for temporary total disability -- exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or

(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical ~~evidence~~ findings.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of

the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases ~~where~~ in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ the week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 12. Section 39-71-702, MCA, is amended to read:

"**39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical ~~evidence~~ findings.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3%

of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.

(4) In cases ~~where~~ in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."

Section 13. Section 39-71-703, MCA, is amended to read:

"**39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award~~.~~ if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

~~(2)~~(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection ~~(3)~~ (4) by 350 weeks.

~~(3) An~~ (4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%. ~~The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.~~

(5) The percentage to be used in subsection ~~(2)~~ (3) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is ~~30~~ 40 years of age or younger at the time of injury, 0%; if the claimant is over ~~30~~ 40 years of age ~~but under 56 years of age~~ at the time of injury, ~~2%~~ 1%; ~~and if the claimant is 56 years of age or older at the time of injury, 3%;~~

(b) for a worker who has completed less than ~~9~~ 12 years of education, ~~3%~~ 1%; for a worker who has completed ~~9 through~~ 12 years or more of education or who has received a graduate equivalency diploma, ~~2%~~ 0%; ~~for a worker who has completed more than 12 years of education, 0%~~;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%~~; and~~. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, ~~20%~~ 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, ~~15%~~ 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, ~~10%~~ 2%.

~~(4)~~(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

~~(5)~~(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury

or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

~~(6)~~(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 14. Section 39-71-710, MCA, is amended to read:

"**39-71-710. Termination of benefits upon retirement.** (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement ~~benefits~~, the claimant is considered to be retired. When the claimant is ~~considered~~ retired, the liability of the insurer is ended for payment of ~~wage supplement~~ permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible under subsection (1) to receive ~~social security~~ retirement benefits and ~~is~~ while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

Section 15. Section 39-71-711, MCA, is amended to read:

"**39-71-711. Impairment evaluation -- ratings.** (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a

claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605."

Section 16. Section 39-71-712, MCA, is amended to read:

"**39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.

(4) A worker requalifies for temporary total disability benefits if the modified position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be ~~considered an element of permanent partial disability and may not be~~ credited against any ~~permanent impairment or any~~ permanent partial disability award or settlement ~~achieved after the injured worker reaches maximum healing~~ under 39-71-703."

Section 17. Section 39-71-721, MCA, is amended to read:

"**39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of ~~such~~ the death, ~~then~~ the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116~~(3)(a)~~(4)(a) through ~~(3)(d)~~ (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116~~(3)(b)~~(4)(b) through ~~(3)(d)~~ (4)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the

minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 18. Section 39-71-723, MCA, is amended to read:

"**39-71-723. How compensation to be divided among beneficiaries.** Compensation due to beneficiaries ~~shall~~ must be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases ~~where~~ in which beneficiaries are a surviving spouse and stepchildren of ~~such~~ the spouse, the compensation ~~shall~~ must be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in 39-71-116~~(3)(e)~~(4)(e) and ~~(3)(f)~~ (4)(f), ~~where~~ if there is more than one, ~~shall~~ must be divided equitably among them, and the question of dependency and amount ~~thereof shall~~ must be a question of fact for determination by the department."

Section 19. Section 39-71-727, MCA, is amended to read:

"**39-71-727. Payment for prescription drugs -- limitations.** (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may ~~only~~ bill the insurer only for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) Reimbursement rates payable by an insurer ~~subject to an agreement pursuant to 39-71-1102~~ are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not to exceed $5.50 per product.

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, average wholesale prices must be updated weekly.

(8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as provided in 37-7-502.

(9) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy.

(10) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer."

Section 20. Section 39-71-741, MCA, is amended to read:

"**39-71-741. Compromise settlements and lump-sum payments.** (1) (a) Benefits under this chapter may be converted in whole or in part to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(2) (a) ~~If an insurer has accepted initial liability for an injury, permanent~~ Permanent partial disability benefits may be converted in whole or in part to a lump-sum payment if:

(i) an insurer has accepted initial liability for an injury; and

(ii) the claimant and the insurer agree to a lump-sum conversion.

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 ~~or $20,000, whichever is less~~.

(c) An agreement is subject to department approval. The department may disapprove an agreement only if the department determines that the ~~settlement~~ lump-sum conversion amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) Upon approval, ~~the agreement constitutes~~ a compromise and release settlement ~~and~~ may not be reopened by the department.

(3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The total of all lump-sum conversions in part that are awarded to a claimant may not exceed $20,000. A

conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval or award of a lump-sum payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under ~~subsection (3)~~ this section must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year~~, rounded to the nearest whole number~~.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) Subject to the other provisions of this section, the department ~~has full power, authority, and jurisdiction to allow~~, shall approve~~, or condition~~ or deny in writing compromise settlements ~~for any type of benefits provided for under this chapter~~ and ~~or~~ lump-sum payments agreed to by workers and insurers. ~~All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing.~~ The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request

the workers' compensation court to review the department's decision."

Section 21. Section 39-71-744, MCA, is amended to read:

"**39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated for a period exceeding 30 days in a correctional institution~~, such as the Montana state prison or the Montana women's correctional center~~ or jail~~,~~ as the result of conviction of a felony or a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)."

Section 22. Section 39-71-1011, MCA, is amended to read:

"**39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means ~~one~~ a worker who has a ~~medically determined restriction~~ permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and 39-71-2001.

(4) "Rehabilitation plan" means an individualized plan ~~to assist~~ that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training,

or specialized job modification and that reasonably reduces the worker's actual wage loss.

(5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation certification and designated by the insurer to the department or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services under 39-71-1003.

(6) "Rehabilitation services" ~~consists of~~ means a program of evaluation, planning, and ~~delivery of goods and services~~ implementation of a rehabilitation plan to assist a disabled worker to return to work."

Section 23. Section 39-71-1032, MCA, is amended to read:

"**39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' notice to the worker and department on a form approved by the department, may terminate any ~~rehabilitation~~ benefits, except medical benefits and the impairment award, that the worker is receiving ~~under this part~~ until the worker cooperates.

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. The department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing.

(3) If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 30 days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court."

Section 24. Section 39-71-2001, MCA, is amended to read:

"**39-71-2001. Rehabilitation benefits.** (1) ~~An injured~~ A disabled worker as defined in 39-71-1011 is eligible for rehabilitation benefits if:

(a) ~~the injury results in permanent partial disability or permanent total disability as defined in 39-71-116~~ the worker has an actual wage loss as a result of the injury;

~~(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;~~

~~(c) a rehabilitation plan completed by~~ (b) a rehabilitation provider, ~~and~~ as designated by the insurer, certifies that the injured worker has reasonable vocational goals and ~~a~~ reemployment ~~and wage potential~~ opportunity and will have a reasonable reduction in the worker's actual wage loss with rehabilitation~~.~~; and ~~The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.~~

~~(d)~~(c) a rehabilitation plan ~~between~~ agreed upon by the injured worker and the insurer is filed with the department. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning and completion date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the ~~injured~~ disabled worker is entitled to receive ~~rehabilitation~~ biweekly compensation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. ~~Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan.~~ The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily ~~completing~~ progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

~~(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.~~

~~(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot return to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).~~

~~(5)~~(3) A worker may not receive temporary total ~~or biweekly permanent partial disability~~ benefits

and ~~rehabilitation~~ the benefits under subsection (2) during the same period of time.

~~(6) The~~ (4) A rehabilitation provider~~, as~~ authorized by the insurer~~,~~ shall continue to ~~work with and~~ assist the injured worker until the rehabilitation plan is completed.

(5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

~~(7)~~(6) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 25. Section 39-72-403, MCA, is amended to read:

"**39-72-403. Time when claims must be presented.** (1) When a claimant seeks benefits under this chapter, ~~his~~ the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within ~~2 years~~ 1 year from the date the claimant knew or should have known that ~~his total disability~~ the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, ~~his~~ claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years."

Section 26. Section 39-72-704, MCA, is amended to read:

"**39-72-704. Medical and hospital expenses.** In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive, for treatment of the occupational disease, ~~without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the department~~ payment of medical expenses under Title 39, chapter 71."

NEW SECTION. **Section 27. Severability.** If a part of [this act] is invalid, all valid parts that are

severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 28. Codification instructions.** (1) [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 6, and the provisions of Title 39, chapter 71, part 6, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to [section 4].

(5) Section 39-71-2001 is intended to be renumbered and codified as an integral part of Title 39, chapter 71, part 10.

NEW SECTION. **Section 29. Effective date.** [This act] is effective July 1, 1995.

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